

# **EXHIBIT 6**

5/15/03 Deposition of GEORGE R. NISBET, JR.

Ronald & Judy Barker vs.

Thornhill Pontiac-Buick-GMC, Inc., vs. Spectrum Services, Inc.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**COPY**

**RONALD P. BARKER and JUDY BARKER**  
individually and on behalf of  
all others similarly situated,  
Plaintiffs,

vs.

Cause No. 2:02-1-255

**THORNHILL PONTIAC-BUICK-GMC, INC.**  
a West Virginia corporation,  
and/or **THORNHILL SUPERSTORE, INC.**  
a West Virginia corporation,  
Defendant.

vs.

**SPECTRUM SERVICES, INC.**  
Third-Party Defendant.

**VIDEO DEPOSITION OF GEORGE RICHARD NISBET, JR.**

**MAY 15, 2003**

**PULLIN, FOWLER & FLANAGAN**  
707 VIRGINIA STREET EAST, SUITE 1000  
CHARLESTON, WEST VIRGINIA

**2:50 P.M.**

**Garrett Reporting Service**  
P.O. Box 20200, Charleston, West Virginia 25362 (304-346-0460)  
*Mary J. Gagnon, CCR*

**PLAINTIFF'S  
EXHIBIT**

**A**

5/15/03 Deposition of GEORGE R. NISBET, JR.

Ronald &amp; Judy Barker vs.

Thornhill Pontiac-Buick-GMC, Inc., vs. Spectrum Services, Inc.

<p style="text-align: center;"><b>APPEARANCES</b></p> <p>On Behalf of the Plaintiff:</p> <p>William L. Bands, Esq. Ftemkos J. Yianne, Esq. Bell &amp; Bands, PLLC 30 Capitol Street Post Office Box 1723 Charleston, West Virginia 25326-1723</p> <p>On Behalf of the Defendant:</p> <p>Johnnie E. Brown, Esq. Pullin Fowler &amp; Flanagan, PLLC 707 Virginia Street East Suite 1000 Charleston, West Virginia 25301</p> <p>On Behalf of the Third-Party Defendant:</p> <p>Charles S. Piccirillo, Esq. Shaffer &amp; Shaffer Post Office Box 38 Madison, West Virginia 25130</p>	<p style="text-align: center;"><b>PROCEEDINGS</b></p> <p>1 VIDEOGRAPHER: We're now on the -- 2 the video record in the matter of Ronald P. Barker and 3 Judy Barker versus Thornhill Pontiac-Buick-GMC, 4 Incorporated, and/or Thornhill Superstore, Incorporated, 5 versus Spectrum Services. 6 My name is Emily Goodwin. I'm a legal 7 video specialist from Katz Consulting Group located at 8 1031 Quarrier Street in Charleston. I'm not related to 9 any of the parties to this action or to counsel of 10 record, nor do I have a financial interest in this 11 action. 12 Today is May 15, 2003, the time is 2:50. 13 This deposition is taking place at Pullin Knopf Fowler &amp; 14 Flanagan, located at 707 Virginia Street, East. The 15 witness today is George Nisbet. Would counsel please 16 identify themselves for the record? 17 MR. BANDS: William Bands and Tim 18 Yianne for the Plaintiffs. 19 MR. PICCIRILLO: Charlie Piccirillo for 20 the Third-Party Defendant, Spectrum Services. 21 MR. BROWN: Johnnie Brown for 22 Thornhill Superstore. 23 VIDEOGRAPHER: Will the court 24</p>
<p style="text-align: center;"><b>INDEX</b></p> <p>Witness By Mr. Bands George R. Nisbet, Jr. 4</p> <p>Exhibit Marked Deposition Exhibit No. 1 5 Deposition Exhibit No. 2 146</p> <p>Reporter's Certificate 150</p>	<p style="text-align: center;"><b>5</b></p> <p>1 reporter please swear the witness? 2 WHEREUPON, 3 GEORGE RICHARD NISBET JR., 4 WAS CALLED AS A WITNESS, DULY SWORN, AND 5 TESTIFIED AS FOLLOWS:) 6 EXAMINATION 7 BY MR. BANDS: 8 Q Could you please state your full name for 9 the record? 10 A George Richard Nisbet, Jr. 11 Q And you are known as Butch? 12 A Known as Butch. 13 MR. BANDS: Before we get started, 14 anything substantively, we'll check this real quick, just 15 the Subpoena Duces Tecum. Have it marked as Exhibit 1. 16 (WHEREUPON, the document referred 17 to was marked for identification 18 purposes as Deposition Exhibit No. 19 1, and is attached hereto.) 20 MR. BANDS: And I'll speak with 21 counsel about this. Item No. 1 is the original file 22 concerning the transaction. "Any correspondence or any 23 other documents between the Defendants and Spectrum 24 Services since the inception of the program at Thornhill</p>

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1 to date."	6	1 the Full Circle Benefits Program. And it's my	8
2 So that looks to be a compound request		2 understanding that you're attempting to locate those?	
3 with the original file in the transaction which you've		3 MR. BROWN: No. Actually, I was	
4 provided, Johnnie, Mr. Brown, rather, with the caveat		4 able to get Mr. Nisbet's --	
5 that it excludes the profit hold back sheet, and that's		5 MR. BANDS: Okay.	
6 the subject of a pending motion which we've already		6 MR. BROWN: -- yesterday and	
7 discussed; correct?		7 actually for the years, I have copies of documents from	
8 MR. BROWN: That's correct.		8 2002, 2001, and 1997 and the accountant was able to give	
9 MR. BANDS: And as far as		9 me the figures for '98, '99, and 2000.	
10 "correspondence and documents between Thornhill		10 For some reason, he could not locate the	
11 Superstore or Thornhill Buick -- Pontiac-Buick-GMC, Inc.		11 actual 1099. I have this information right here. I know	
12 and Spectrum Services since the inception of the Full		12 it's subject to a protective order, a -- confidentiality	
13 Circle Benefit Program to date," we've, I believe,		13 agreements. I guess -- I don't know how we want to	
14 addressed that in Mr. Thornhill's deposition.		14 handle that if we'd get into this on the record here.	
15 MR. BROWN: That is correct.		15 Sealing a portion of the testimony.	
16 Those documents that were produced in Mr. Thornhill's		16 MR. BANDS: Why don't we play that	
17 deposition would be responsive -- responsive to this.		17 one by ear --	
18 MR. BANDS: Okay. Number 2,		18 MR. BROWN: Okay.	
19 "George 'Butch' Nisbet's financial statements and tax		19 MR. BANDS: -- and see how we want	
20 returns for the year he began selling and/or promoting		20 to do it. It won't be something that will come up in the	
21 the program up to the current date, and also monthly		21 immediate beginning of the deposition. So, we might as	
22 financial statements of Thornhill to GM."		22 well just see how we want to exchange that information,	
23 And that, those items are either the		23 and --	
24 subject of pending motions or have been ruled upon?		24 Number 4, "any training materials	
1 MR. BROWN: Yes. I believe Judge	7	1 Defendants may have received from any agents,	9
2 -- Magistrate Stanley said that we did not have to		2 representatives or employees of the Spectrum Full Circle	
3 produce the individual tax returns and financial		3 Benefits Program. I think we've addressed that.	
4 statements, and the monthly financial statements of		4 MR. BROWN: Yes. And Mr.	
5 Thornhill are subject to a pending motion before Judge		5 Thornhill, as far as I know, there are no documents or	
6 Hallanan at this time.		6 videos or anything that we have responsive to that.	
7 MR. BANDS: And are the -- and		7 MR. BANDS: Okay.	
8 referring to co-counsel, are the subject personal		8 MR. BROWN: And the same answer	
9 financial records that Judge Hallanan ruled were not to		9 for Number 5.	
10 be produced, are they a subject of an objection to her		10 MR. BANDS: And Number 5 would	
11 order? Are you aware of that? Did we object to her		11 speak to Universal Underwriters?	
12 order in regard to individual financial information?		12 MR. BROWN: Correct.	
13 MR. YIANNE: No.		13 BY MR. BANDS:	
14 MR. BANDS: Just to make sure		14 Q Training materials. Mr. Nisbet, I'm	
15 we're complete. Number 3, "a complete and legible copy		15 going to go through some ground rules and just other	
16 of any and all commission checks, rebate checks, 1099's,		16 items, housekeeping items, with regard to depositions.	
17 commission or refund calculation sheets for the benefit		17 But first of all, this is fresh in my	
18 of Mr. Nisbet personally and as an officer of the		18 mind and we have this before us. I do want to ask you if	
19 defendant company," bearing in mind that at least the		19 you have knowledge of any -- primarily, I would say,	
20 1099's have addressed the -- the other financial		20 probably F&I training materials and/or materials on the	
21 information, I believe, we covered.		21 sales marketing and promotion of the Spectrum Full Circle	
22 But the 1099's, we discussed with you		22 Benefits Program from Spectrum Services, Inc.?	
23 previously with regard to Mr. Thornhill. 1099's for		23 Those would be any videotapes, binders,	
24 commissions or payments from Spectrum from the sale of		24 memos, documents, notebooks, flyers, any tangible object	

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<p>10</p> <p>1 whatsoever that refers to training of Thornhill personnel</p> <p>2 including yourself and/or Mr. Thornhill on the marketing</p> <p>3 of this Full Circle Benefit Program.</p> <p>4 A The only tangible thing that we have is</p> <p>5 the actual package itself, which is the Full Circle</p> <p>6 Benefit package was the only thing we have. There are no</p> <p>7 videotapes, no notebooks, no written policies and</p> <p>8 procedures. But that is the only tangible thing we have.</p> <p>9 Q Okay. I would also ask the same</p> <p>10 question, without having to go through the whole litany</p> <p>11 of what I'm looking for as far as anything tangible, the</p> <p>12 same question for anything from Universal Underwriters</p> <p>13 with regard to the F&amp;I Department and practices,</p> <p>14 procedures and those kinds of things that are undertaken</p> <p>15 at the dealership under, I assume, your guidance?</p> <p>16 A Don't -- don't have any visual aids or</p> <p>17 videotape aids or anything.</p> <p>18 Q Any books or anything that anybody has</p> <p>19 ever provided to anyone that works for you about</p> <p>20 training?</p> <p>21 A I'm sure we've had some books. We have</p> <p>22 had some people that have gone to training classes and</p> <p>23 they have received books and, you know, as far as</p> <p>24 training and those type of things.</p>	<p>12</p> <p>1 MR. PICCIRILLO: So these other things</p> <p>2 are from someone else?</p> <p>3 MR. BANDS: Yes, yes.</p> <p>4 MR. BROWN: Yes. And I don't even</p> <p>5 think he was talking about Universal. Just to be clear,</p> <p>6 I don't think he was talking about the Universal.</p> <p>7 THE WITNESS: To clarify the things</p> <p>8 we have, we have not had any training with Universal.</p> <p>9 Most of the training that we have had has been with a</p> <p>10 Finance and Insurance specialist who is now the Midwest</p> <p>11 Agency.</p> <p>12 BY MR. BANDS:</p> <p>13 Q Okay. And that's what I was going to get</p> <p>14 to.</p> <p>15 A We've gone through the training with</p> <p>16 them. Also, we've had GMAC training.</p> <p>17 Q Okay.</p> <p>18 A You know, training as well.</p> <p>19 Q All right.</p> <p>20 A So it's been from various sources.</p> <p>21 Q Okay. So we have, essentially, no</p> <p>22 training materials, as we discussed, from Spectrum. None</p> <p>23 from Universal. There may be some from GMAC.</p> <p>24 A Possibly.</p>
<p>11</p> <p>1 But we don't have anything that we keep</p> <p>2 on a permanent record as far as a, you know, as a video</p> <p>3 copy or a book as far as the F&amp;I training.</p> <p>4 Q Okay. It's possible that either Mr.</p> <p>5 Barker, Mr. Painter, Mr. Stowers or Mr. Mounts or other</p> <p>6 people who have worked in F&amp;I and/or sales at the</p> <p>7 dealership may have some of these documents or booklets</p> <p>8 or anything in their possession at work or at home; is</p> <p>9 that possible?</p> <p>10 A Could have some training materials from</p> <p>11 possible training, yes.</p> <p>12 Q Okay. I would ask that -- if you could</p> <p>13 check on that for me, please? And let your counsel know.</p> <p>14 Can I see Exhibit No. 1 from Mr. Thornhill please?</p> <p>15 MR. PICCIRILLO: Bill, I want to break</p> <p>16 in, but just for clarity. Is he saying that there are</p> <p>17 training materials from Universal or from their F&amp;I</p> <p>18 people or from Spectrum?</p> <p>19 MR. BANDS: He -- he -- with</p> <p>20 Spectrum, he said that they have nothing but the</p> <p>21 materials.</p> <p>22 MR. PICCIRILLO: Okay. That's all.</p> <p>23 MR. BANDS: And by materials, I</p> <p>24 mean the --</p>	<p>13</p> <p>1 Q Possibly. And there may be some from</p> <p>2 Debbie Copeland's company. What's the name of that</p> <p>3 company?</p> <p>4 A It is now Midwest. It was Finance and</p> <p>5 Insurance Specialists. It's now Midwest Agency.</p> <p>6 Q Okay. What about training materials from</p> <p>7 any other organization such as AFIP or anything like</p> <p>8 that?</p> <p>9 A We -- AFIP is something that we have done</p> <p>10 after this particular case. We have our -- several</p> <p>11 people that are AFIP certified now, and they would</p> <p>12 probably have some materials.</p> <p>13 I'm sure they would have some materials</p> <p>14 from AFIP, which was administered by a GMAC</p> <p>15 representative.</p> <p>16 Q Okay. And if you will check on that and</p> <p>17 please let counsel know, I would appreciate it. Any</p> <p>18 other organizations that have provided you or anyone at</p> <p>19 your dealership with any training on the topic of F&amp;I</p> <p>20 transactions, sales and promotions of optional goods and</p> <p>21 services, financing, disclosures, proper preparation of</p> <p>22 documents, anything that in any way relates to the F&amp;I</p> <p>23 Department?</p> <p>24 A I think we've pretty well covered most of</p>

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<p>14</p> <p>1 them. Of course, you know, there could be a few more, 2 but I think most of the information we have is directly 3 from Debbie Copeland. 4 Q Okay. And/or AFIP? 5 A And/or AFIP. 6 Q Do you have any training materials, such 7 as what we've just discussed, that speak to F&amp;I practices 8 that were provided to you by Frank Baer of Commercial 9 Insurance Services while he still handled your insurance 10 accounts and prior to his being put on retainer by the 11 dealership? 12 A I couldn't answer if I have anything 13 directly. I know we have used some tools that Mr. Baer 14 has provided for us. 15 He was instrumental in helping us to 16 develop the -- I think the optional form that we use for 17 the -- for the Full Circle Benefit Program. 18 There are a few things that he has helped 19 us to develop, but I can't sit here and tell you exactly 20 which things came from him and which things that haven't. 21 But he has been helpful in helping -- making sure that we 22 have the proper tools to do the proper disclosures and -- 23 Q And you're referring to the acceptance 24 letter?</p>	<p>16</p> <p>1 I think it was Commercial Insurance, but I don't have the 2 exact specifics on that. 3 Q So you wouldn't have any knowledge when 4 that insurance coverage ceased for the dealership? 5 A I can't remember the exact year. 6 Q And were you involved in retaining Mr. 7 Baer as counsel for the dealership? 8 A Mr. Thornhill does that, but he runs it 9 by me, and I was aware that he was retained, yes, sir. 10 Q Approximately how long ago was that? How 11 many months, years -- 12 A Possibly -- 13 Q -- if you can't remember a date? 14 A Possibly two years ago. Two, two and a 15 half years ago that he was retained to look over things. 16 Q All right. Well, I already got ahead of 17 myself and started asking you some questions before we 18 went through the ground rules. 19 I haven't met you before. My name's Bill 20 Bands. As you know, myself and my associate here, Tim 21 Yianne, represent the Plaintiffs in this case. 22 I'm sure you're very much aware of what 23 the case is about. This is a deposition, your 24 deposition. It is essentially an interview under oath</p>
<p>15</p> <p>1 A Yes. 2 Q The Full Circle acceptance letter? 3 A Yeah, the optional -- 4 Q Do you know if that was developed -- do 5 you know when that was developed? 6 A I can't remember. Shortly, when it -- 7 just speculation. I can't give you an exact time. I 8 think it was after -- there was a case involved with Joey 9 Holland and we wanted to make sure that we were doing 10 things correctly. 11 So we enlisted Mr. Baer to make sure that 12 we were doing everything properly. We wanted to make 13 sure we were doing everything properly, and he thought it 14 was a good idea that even though that the form had been 15 approved and had the optional language on the bottom, 16 that we even did a separate form to show that it was 17 optional. And it was at that time, I can't remember the 18 exact date, that we initiated that form. 19 Q What company, insurance company, did Mr. 20 Baer essentially represent as a broker or an agent when 21 he was acting as the insurance agent for the dealership? 22 A I can't remember. Mr. Thornhill handles 23 all the, you know, the acquiring of the insurance. We 24 discuss it and if I'm not mistaking, it was Commercial.</p>	<p>17</p> <p>1 when we get to find out information about the 2 dealership's practices, about the transaction involving 3 my clients. Essentially about -- just about anything and 4 everything subject to some limitations. 5 If at any time you don't understand a 6 question that I ask, I want you to please ask me to 7 rephrase it. If there is a portion of a question you 8 don't understand and you can be more precise and tell me 9 what you don't understand, I would ask that you do that 10 as well. 11 Otherwise, when the record's being taken, 12 there's going to be a question and an answer and the 13 record and everybody who reads it, is going to assume 14 that your answer is responsive to my question. 15 And so just to make sure we're clear, we 16 want to make sure that you understand the question, I 17 understand the answer, et cetera. Fair enough? 18 A Yes, sir. 19 Q Okay. Second ground rule, if you want to 20 call it that, is I noticed you were nodding your head. 21 That's fine to a certain extent as we go on, but when you 22 give an answer, you need to give it verbally. 23 A Yes, sir. 24 Q So that it's in the record. Be it yes,</p>

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18

1 no, whatever, it needs to be verbal. If you need a break  
 2 at any point in time, you know, let your attorney know.  
 3 And if we're at a point where we can stop and it's good  
 4 to stop, we will do so.  
 5 I will remind you that during all breaks,  
 6 though, you're still under oath. It's as if you never  
 7 left the room. Do you understand those ground rules  
 8 okay?  
 9 A Yes, sir.  
 10 Q No problem with them?  
 11 A No problem whatsoever.  
 12 Q Okay. Have you ever given a deposition  
 13 before?  
 14 A No, sir.  
 15 Q Did you ever give a deposition at all in  
 16 any cases that were brought against the dealership?  
 17 A No, sir.  
 18 Q Any cases where Mr. Neal or Mr. Thornhill  
 19 may have given a deposition?  
 20 A No, sir.  
 21 Q This is your very first one?  
 22 A Very first deposition.  
 23 Q Okay. Well, I've already told you the  
 24 purpose of it. What's your address, both mailing and

19

1 physical?  
 2 A My mailing address is P. O. Box 272,  
 3 Stollings, S-T-O-L-L-I-N-G-S, West Virginia 25646. My  
 4 physical address is 81 Stollings Hill Road, Stollings,  
 5 West Virginia 25646.  
 6 Q And how long have you lived at that  
 7 address?  
 8 A Approximately seven years.  
 9 Q When did you start working for Thornhill?  
 10 A Jan --  
 11 Q Or you became part owner? Either one.  
 12 A Well, I started working for Thornhill  
 13 January of 1996, and I became part owner -- I hate to say  
 14 I don't remember the exact date, but it was approximately  
 15 two years later, I think.  
 16 Q In 1998?  
 17 A '98, yes.  
 18 Q So you've lived at this address for the  
 19 duration of your association --  
 20 A Yes.  
 21 Q -- with the Thornhill dealership?  
 22 A Yes, sir.  
 23 Q Are you married?  
 24 A Yes, sir.

20

1 Q And what's your wife's name?  
 2 A My wife's name is Alyse, A-L-Y-S-E,  
 3 Nisbet.  
 4 Q And how long have you been married?  
 5 A Been married October the 5th, 1996.  
 6 Q Is this a first marriage?  
 7 A Second marriage.  
 8 Q And what was the name of your first wife?  
 9 A Joyce Nisbet.  
 10 Q Okay. What were both of their maiden  
 11 names?  
 12 A Joyce Marie Hager and Alyse Byrd.  
 13 Q How long were you married to Joyce?  
 14 A I hate to say I can't remember exactly.  
 15 A little over a year.  
 16 Q All right. Was there a -- approximately  
 17 how much time elapsed between the first and second  
 18 marriage?  
 19 A Six years.  
 20 Q Does Joyce still reside in West Virginia?  
 21 A As far as I know, yes.  
 22 Q Do you know if she resides in the Logan  
 23 area?  
 24 A As far as I know, yes.

21

1 Q All right. But you don't have any idea  
 2 of her address?  
 3 A I don't know an exact address. I think  
 4 Chapmanville. I think her kids attend the Chapmanville  
 5 schools.  
 6 Q Okay. Do you and Alyse have any  
 7 children?  
 8 A I have a stepdaughter. Alyse has a  
 9 daughter.  
 10 Q Okay.  
 11 A She'll be 20 years old May the 21st, next  
 12 week.  
 13 Q What's her name?  
 14 A Her name is Ashley Nicole Byrd.  
 15 Q Does she reside with you in Stollings?  
 16 A No. No, she doesn't.  
 17 Q Does she live in the Logan area?  
 18 A No.  
 19 Q Where does she live?  
 20 A She's living in Summersville.  
 21 Q Okay. Does Alyse work outside the home?  
 22 A Not any more.  
 23 Q When she did work, if you could tell me  
 24 when she stopped working and what she did.

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<p>22</p> <p>1 A She was an R -- she's been an RN since 2 roughly 1984. Worked at, most recently, the last 12, 13, 3 14 years at Logan General Hospital as an RN in intensive 4 care and critical care unit. 5 And as of January 18th, she's no longer 6 working. She had a couple strokes in January and is not 7 working. 8 Q I'm sorry to hear that. You began with 9 Thornhill in 1996. What was your job title when you 10 began with Thornhill? 11 A Sales -- sales -- general sales manager, 12 sales manager. 13 Q Okay. And when you say "general sales 14 manager" and "sales manager," a general manager -- my 15 understanding of that is a general manager essentially is 16 -- oversees the entire dealership for the owner or with 17 -- working with the owner, and the sales manager would 18 work beneath the general manager. Did you wear a general 19 manager hat and then also handle all the sales? 20 A I said general sales manager, which is 21 just a fancy name for little better than a sales manager. 22 Q Okay. 23 A But I basically handled the sales. I had 24 nothing to do with the service department what so --</p>	<p>24</p> <p>1 Q The easiest way to do it, probably. 2 A I started 24 years ago just about to the 3 tee. I went to Rushton Motor Company, Mr. Larry LaFon. 4 I asked him for a job washing cars so I could make a 5 little pocket money to go to school. 6 And he told me to put my good clothes on 7 and come on in, he'd teach me how to sell cars. So I 8 started in the automotive industry 24 years ago in '79, 9 and that's what I've been doing ever since with the 10 exception of basically going to Marshall University and 11 getting my degree. 12 Q Okay. We're going to get to your 13 education here in a second. So for the entire -- 14 basically, the entire duration that you've worked in the 15 automotive business, 24 years, it's all been in the sales 16 end? 17 A It's all been in the sales end. 18 Q Okay. Now, when you say that all your 19 employment has been in the sale end, does that include as 20 well F&amp;I activities and responsibilities? 21 A Correct. 22 Q Okay. So you began -- when you began in 23 the automotive industry and started to cut your teeth, if 24 you will, as a salesperson and learning the -- learning</p>
<p>23</p> <p>1 whatsoever. I handled new and used sales department is 2 what I was hired to do -- 3 Q Okay. 4 A -- in '96. 5 Q And where -- from -- where did you work 6 before you came on board at Thornhill? 7 A Worked for Mike Ferrell Ford. Worked for 8 Mike Ferrell, for Mike Ferrell companies for 9 approximately 12 years prior. 10 Q And in what kind of capacity did you work 11 for Mike Ferrell for those 12 years? 12 A I was sales manager. It was Nissan 13 facility and then -- and also worked in the finance 14 department at the Ford facility and eventually became the 15 general sales manager of the Ford dealership. 16 Q Okay. Prior to going to work for Mike 17 Ferrell, where did you work? 18 A I worked for Riverside Motor Company in 19 Madison, West Virginia in 19 -- for approximately two 20 years, '83 and '84, as finance manager. 21 Q Okay. 22 A And prior to that, I started in the 23 automotive industry -- just to go ahead and complete the 24 history for you.</p>	<p>25</p> <p>1 the sales end of the business, at that point in time, did 2 you also start to learn the F&amp;I end, too? 3 Or, at what point over the last 24 years 4 did you first begin to work in F&amp;I? 5 A It might be easier for me just to start 6 chronologically and give you a little history, if that 7 might be the best way to go. 8 I started in '79, like I said, as sales. 9 Mr. -- when I worked for Mr. LaFon at Rushton Motors. He 10 since -- so I was in sales. I learned sales. 11 He then formed L &amp; S Chevrolet Olds, and 12 I moved from Rushton Motors to L &amp; S Chevrolet and 13 continued in sales. This was basically summer employment 14 because I was attending Marshall University at the time. 15 When I was in my senior year at Marshall, 16 I was contacted by Riverside Motor Company, the year I 17 was supposed to graduate, in March. They hired me as a 18 finance manager, which was my first event as finance 19 manager, and I think that was in 1983. It could have 20 been '84, but I think it was '83 that I started. 21 I worked there approximately two years in 22 finance. Like I said, that was in March. I was supposed 23 to graduate in May when I started. After I left there, 24 after two years, I went back to one semester. I got my</p>

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<p>26</p> <p>1 degree and then I went straight to work for Mike Ferrell</p> <p>2 Nissan.</p> <p>3 I was sales manager at Mike Ferrell</p> <p>4 Nissan for approximately two years, being '86, '85, '86,</p> <p>5 '86 -- '85 and '86, I think it was. And then in '87,</p> <p>6 part of a -- middle of '87, I moved to the Ford Store,</p> <p>7 and I reinitiated the finance department at the Ford</p> <p>8 Store.</p> <p>9 Approximately three or four years to the</p> <p>10 -- 'til around 1990. And then in and around 1990, I</p> <p>11 became general sales manager and was general sales</p> <p>12 manager from there until 1995 when I since went to</p> <p>13 Honeycutt at the time, January of '96.</p> <p>14 Q Okay. And when you were general sales</p> <p>15 manager, did the F&amp;I department fall under your --</p> <p>16 A Yes.</p> <p>17 Q -- leadership?</p> <p>18 A Yes.</p> <p>19 Q So essentially, after you began in F&amp;I as</p> <p>20 the manager, in I believe you said about '80 -- was it</p> <p>21 '83?</p> <p>22 A '83, '84.</p> <p>23 Q At the dealership you identified. A lot</p> <p>24 of dealerships. It's hard to keep them straight. Since</p>	<p>28</p> <p>1 Q And so I guess you were there until '83?</p> <p>2 Is that what you said?</p> <p>3 A Yeah.</p> <p>4 Q That you were supposed to graduate in</p> <p>5 '83?</p> <p>6 A I was supposed to graduate in '83. I was</p> <p>7 -- yes, I was there '80, '81, '82, '83, and then I went</p> <p>8 back and graduated in '86.</p> <p>9 Q Okay. Class of '86?</p> <p>10 A Class of '86.</p> <p>11 Q We have something in common. What did</p> <p>12 you study at Marshall?</p> <p>13 A Business Management.</p> <p>14 Q Any minors?</p> <p>15 A No.</p> <p>16 Q What's your date of birth?</p> <p>17 A April 9th, 1961.</p> <p>18 Q Okay. We talked to Mr. Thornhill about</p> <p>19 the affiliations of the dealership with NADA and other</p> <p>20 organizations.</p> <p>21 In fact, I believe that he told me about</p> <p>22 the NADA, but not, obviously, the West Virginia trade</p> <p>23 organization.</p> <p>24 Are there any other associations,</p>
<p>27</p> <p>1 that time, you've kind of worked both sales and F&amp;I</p> <p>2 together?</p> <p>3 A Yes, sir.</p> <p>4 Q Okay. And when you went on board at</p> <p>5 Honeycutt and then Thornhill as a sales manager, the F&amp;I</p> <p>6 department was under your guidance?</p> <p>7 A Yes, sir.</p> <p>8 Q And if I understand it correctly, then</p> <p>9 you would be the head of F&amp;I at the Thornhill dealership</p> <p>10 since it's been in existence?</p> <p>11 A Yes.</p> <p>12 Q The Thorn -- as a Thornhill dealership?</p> <p>13 A Yes, sir.</p> <p>14 Q Not the, not the --</p> <p>15 A Yes, sir.</p> <p>16 Q -- various incarnations. Okay. Where'd</p> <p>17 you go to high school?</p> <p>18 A Logan High School.</p> <p>19 Q And what year did you graduate?</p> <p>20 A 1979.</p> <p>21 Q Okay. Did you start at Marshall</p> <p>22 immediately after Logan High School?</p> <p>23 A Left Logan High School and immediately</p> <p>24 went to Marshall University.</p>	<p>29</p> <p>1 national or state or local, that the Thornhill dealership</p> <p>2 and/or you yourself belong to?</p> <p>3 A The only ones I think would be the West</p> <p>4 Virginia Automobile and Truck Dealers Association. Of</p> <p>5 course, NADA, and then, of course, we recently had the</p> <p>6 association with AFIP with the certification there.</p> <p>7 Q Okay. Mr. Thornhill and I kind of went</p> <p>8 round a little bit trying to figure out what AFIP meant.</p> <p>9 But is it Association of F&amp;I Professionals or --</p> <p>10 A Association of Finance and Insurance</p> <p>11 Professionals.</p> <p>12 Q Okay. Where's that based?</p> <p>13 A I'm not sure exactly where it's based. I</p> <p>14 know, I think the gentleman that actually, the -- GMAC</p> <p>15 has talked to is on the west coast. I wouldn't know</p> <p>16 exactly where.</p> <p>17 Q Okay. And there was a name that we had</p> <p>18 of someone from GMAC who was responsible for getting you</p> <p>19 guys involved in AFIP and actually put on the course.</p> <p>20 What was his name?</p> <p>21 A Bill Darisol.</p> <p>22 Q Bill Darisol. And is he a zone employee</p> <p>23 for GMAC?</p> <p>24 A He is a GM -- I can't get into specifics</p>

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<p style="text-align: right;">30</p> <p>1 of it, but my understanding is he is a GMAC employee, but  2 he is the zone or regional representative, which is  3 actually the dealer contact.  4 Q Okay. So he's basically for this  5 geographic area. He has the dealer relations?  6 A Dealer contact, dealer relations, yes.  7 Q Okay. Does he have any -- does he have  8 any warranty responsibilities or service  9 responsibilities?  10 A I don't know what their exact  11 responsibilities are. I mean, he is involved with all  12 facets of, you know, of GMAC. He's our contact for  13 warranties, for financing, for, you know, training, for  14 --  15 Q Okay.  16 A You know, for everything.  17 Q All right. Are you familiar with the  18 NADA code of ethics?  19 A No, sir.  20 Q Okay. We talked to Mr. Thornhill about  21 that and he was, and said that the dealership subscribed  22 to it. But based on your response, I would take it that  23 he hasn't shared that information with you?  24 A I have the code of ethics, but I'm not</p>	<p style="text-align: right;">32</p> <p>1 dealership?  2 A My present title is Vice President. My  3 function is basically as general sales manager.  4 Q Okay. And if I understand the structure  5 correctly, also you own 25 percent of the business;  6 correct?  7 A Yes, sir.  8 Q Okay.  9 A Owe on 25 percent of the business, I  10 should say.  11 Q I'm sorry?  12 A Got to earn the end. I owe on 25 percent  13 of the business.  14 Q Okay. As far as your title as general  15 sales manager, it's my understanding that if we were to  16 look at a corporate structure that essentially Gene Neal  17 works directly under you?  18 A Yes, sir.  19 Q And that Gene Neal is the sales manager?  20 A Correct.  21 Q And that there are some duties that the  22 two of you share depending on whether someone's out of  23 the dealership or whether or not someone's busy with  24 something else or on vacation or whatever.</p>
<p style="text-align: right;">31</p> <p>1 going to say -- I couldn't repeat them to you --  2 Q Okay.  3 A -- so I don't want to, you know, I'm  4 under oath. I don't want to sit here and make you think  5 that I know the Code of Ethics.  6 Q Okay.  7 A So I'm not going to.  8 Q We probably have a copy here somewhere.  9 Well, pass on that. Are there -- have there been any  10 meetings, conferences or are there any written  11 guidelines, policies or procedures that you are aware of  12 that have been gone over with you by Mr. Thornhill and/or  13 that you've developed with Mr. Thornhill or adopted with  14 Mr. Thornhill and passed on to the employees that speak  15 to ethics in business practices, sales of automobiles,  16 sales of F&amp;I products?  17 A No written things that I'm aware of at  18 this time. I know, you know, we do have discussions in  19 our meetings on, you know, how we want things done and  20 that we want things done, you know, done properly.  21 But as far as actually a written code of  22 ethics or anything that has been handed down or passed  23 out, I can't recall of anything.  24 Q What's your present title with the</p>	<p style="text-align: right;">33</p> <p>1 But that he works under you in a linear  2 fashion, but there are some of the duties that you share?  3 A Yes. We are pretty much on equal, you  4 know, on equal footing. The main difference is the fact  5 that I do, you know, in participating in the ownership of  6 the dealership with 25 percent. As far as our functions,  7 we're pretty much on the same, you know, on the same  8 level.  9 Q Okay.  10 A We pretty much perform the same  11 functions.  12 Q And then under the two of you, you have  13 sales, which are strictly the guys who sell the vehicles?  14 A Correct.  15 Q And you have the F&amp;I department?  16 A Correct.  17 Q And in the F&amp;I department, we have Mr.  18 Painter and Greg Barker. Jeff Mounts does some of it,  19 but he also is the specialist for special financing, and  20 Hank Stowers for the used car lot in Boone County.  21 A Yes. Not at the current time. Mr.  22 Stowers and Mr. Painter are no longer with us.  23 Q Oh, okay. Okay. How many people are  24 employed in the F&amp;I department right now under you and</p>

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<p>34</p> <p>1 Mr. Neal?</p> <p>2 A Mr. Barker and Mr. Mounts.</p> <p>3 Q Okay. Anyone else?</p> <p>4 A No. That would be the only, only F&amp;I.</p> <p>5 The only other person who would handle any F&amp;I and who is</p> <p>6 licensed in F&amp;I would be Everett Frazier, who will handle</p> <p>7 some disclosure.</p> <p>8 Q Okay. Now is Mr. Frazier primarily a</p> <p>9 salesman?</p> <p>10 A Mr. Frazier is basically -- he is an</p> <p>11 administrative assistant to Mr. Thornhill and Mr. Neal</p> <p>12 and myself.</p> <p>13 Q Okay. And he can fill in an F&amp;I when</p> <p>14 need be, then?</p> <p>15 A Yes.</p> <p>16 Q And you said licensed in F&amp;I. Tell me</p> <p>17 about licensure in the field of F&amp;I.</p> <p>18 A You have to be licensed by the State of</p> <p>19 West Virginia as far as being -- as far as the life and</p> <p>20 disability insurance, and he is licensed.</p> <p>21 He is currently, they're currently</p> <p>22 getting him signed up for the AFIP training. But he has</p> <p>23 been trained to do the disclosures and knows all the</p> <p>24 proper documentation and disclosures to fully disclose a</p>	<p>36</p> <p>1 handle the FI end in a deal, you basically have five</p> <p>2 people at this point in time; is that correct?</p> <p>3 A Mr. Neal and myself and Mr. Barker, and</p> <p>4 Mr. Mounts and Mr. Frazier, yes.</p> <p>5 Q As far as deskings duties, Mr. Thornhill</p> <p>6 has told us that that primarily falls to you with Mr.</p> <p>7 Neal filling that role as well?</p> <p>8 A Correct.</p> <p>9 Q And if I understand the procedure</p> <p>10 correctly, in a transaction, the salesman will</p> <p>11 effectively greet the customer on the lot, talk to them</p> <p>12 about vehicles that they want, handle the customer</p> <p>13 contact, bring them in and have them fill out some</p> <p>14 initial information on job status, the vehicle they want,</p> <p>15 any trade they might want to make, information like that.</p> <p>16 And then it goes to deskings, which would</p> <p>17 be you or Mr. Neal, to basically run the hard figures and</p> <p>18 see what you can do --</p> <p>19 A Correct.</p> <p>20 Q -- to help them out? And then once</p> <p>21 there's some sort of agreement reached after negotiating</p> <p>22 the deal, which -- in which the deskings person can</p> <p>23 actually be involved along or instead of a salesperson,</p> <p>24 after that it goes to F&amp;I for preparation of documents.</p>
<p>35</p> <p>1 deal.</p> <p>2 Q Okay. And that's as far as the life and</p> <p>3 health insurance; right?</p> <p>4 A As far -- no. We've got him trained as</p> <p>5 far as everything.</p> <p>6 Q Okay.</p> <p>7 A We won't just let anybody do that. We've</p> <p>8 got to have somebody --</p> <p>9 Q And you all have trained him?</p> <p>10 A We have trained him and he has also been</p> <p>11 -- I say we have trained. He's also sat down with Ms.</p> <p>12 Copeland and gone through that as well.</p> <p>13 Q Okay. Does Mr. Mounts still handle</p> <p>14 special financing?</p> <p>15 A Yes, sir.</p> <p>16 Q And if Mr. Mounts is kind of splitting</p> <p>17 special financing duties and general F&amp;I duties, does</p> <p>18 that mean that Mr. Barker is kind of carrying a lion's</p> <p>19 share of the F&amp;I duties --</p> <p>20 A Yes, sir.</p> <p>21 Q -- when you and/or Mr. Neal and/or Mr.</p> <p>22 Frazier aren't chipping in to help?</p> <p>23 A Yes, sir.</p> <p>24 Q But in essence, as far as people who can</p>	<p>37</p> <p>1 And that's where optional services and products are</p> <p>2 discussed with the consumer?</p> <p>3 A Correct.</p> <p>4 Q Okay. In regard to deskings duties, when</p> <p>5 a customer has a car that they want to trade, I assume</p> <p>6 that the first thing that's done is that document or that</p> <p>7 information is provided on the application document,</p> <p>8 which, you know, we'll get to this. I don't even have it</p> <p>9 handy, but where on the back it's folded over partially</p> <p>10 and you do the four square analysis. Do you understand</p> <p>11 what I'm talking about?</p> <p>12 A Uh-huh.</p> <p>13 Q What's the formal name of that document?</p> <p>14 Not the four square rear but the --</p> <p>15 A Sales worksheet.</p> <p>16 Q Sales worksheet. Okay. I didn't know if</p> <p>17 there was a formal name other than a worksheet. Once</p> <p>18 that information is provided on that, how does the</p> <p>19 dealership determine the status of that account on a</p> <p>20 trade?</p> <p>21 Does the deskings person actually, with</p> <p>22 permission of the customer, call the lender to find out</p> <p>23 how much is owed on the vehicle using the VIN, which I</p> <p>24 assume's given on the form. Or how does that work?</p>

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<p>38</p> <p>1 A You're talking about the payoff on the</p> <p>2 vehicle --</p> <p>3 Q Yes.</p> <p>4 A -- that they want to trade? Yeah. With</p> <p>5 the VIN number and the permission of the compan -- of the</p> <p>6 customer, we can call and find out what the payoff is</p> <p>7 with their Social Security number, VIN number and</p> <p>8 sometimes, you know, they'll give us the account number</p> <p>9 if they have it.</p> <p>10 Q Okay. And on the worksheet, the front of</p> <p>11 the worksheet's filled out by the salesperson; right?</p> <p>12 A Correct. Yes, sir.</p> <p>13 Q Before they come to desking?</p> <p>14 A Correct. Yes, sir.</p> <p>15 Q Okay. Once they come to desking, I'm</p> <p>16 assuming they come up and they tell you that you've got</p> <p>17 an up on the lot and here's the worksheet. What's the</p> <p>18 first thing the desking person does?</p> <p>19 A Well, the first thing you do is just look</p> <p>20 to see what you have and if you have, you know, a vehicle</p> <p>21 that's going to be traded in, you would go out and make</p> <p>22 an appraisal on the, you know, on the trade-in.</p> <p>23 And, you know, you'd just -- would</p> <p>24 initially start inputting the information into the, into</p>	<p>40</p> <p>1 Q Protocol --</p> <p>2 A Yeah.</p> <p>3 Q -- or anything like that?</p> <p>4 A No, there's nothing that says the</p> <p>5 appraisal has to be done first or that there has to be a</p> <p>6 payoff value before you get an appraisal. It's just, you</p> <p>7 know, whatever's convenient at the time.</p> <p>8 Q And you said you go out and do the</p> <p>9 appraisal. So I take it the first step in the appraisal</p> <p>10 is actually a visual inspection of the vehicle?</p> <p>11 A Correct.</p> <p>12 Q And what are you looking for when you do</p> <p>13 that visual inspection?</p> <p>14 A You look at the visual inspection. You're</p> <p>15 looking at the condition of the car, general condition of</p> <p>16 the car. The mileage. All of the equipment.</p> <p>17 You know, they make several different</p> <p>18 models of the car. You want to make sure you're looking</p> <p>19 to see whether it's a GS an LS or an SS or, you know,</p> <p>20 what it could be.</p> <p>21 You look at the condition of the tires.</p> <p>22 You'll look to see if there's any paint, you know, paint</p> <p>23 work. The general cleanliness of it. You know, just a</p> <p>24 general appraisal to try to determine a value of it.</p>
<p>39</p> <p>1 the computer and then you would do your appraisal and</p> <p>2 then you would put your figures on the paper for the</p> <p>3 customer to -- I mean, for the salesperson to present to</p> <p>4 the customer.</p> <p>5 Q Okay. When you're presented with the</p> <p>6 worksheet and you said you get some -- get the</p> <p>7 information, does that mean that you take the worksheet</p> <p>8 and the first thing that you do is appraise the vehicle?</p> <p>9 Or do you initially make the call to the</p> <p>10 lender or go online or however you do it, to determine</p> <p>11 whether there's any equity in the trade?</p> <p>12 A It could be either way. There's no set</p> <p>13 policy or procedure. There's times where the first thing</p> <p>14 you will do will be to get the payoff. There's times</p> <p>15 where the first thing you will do will be get the</p> <p>16 appraisal.</p> <p>17 If you have three or four that are</p> <p>18 working, and you have three or four appraisals to do,</p> <p>19 you'll walk out and do all of the appraisals at one time,</p> <p>20 and then they'll get the payoffs. There's not set, you</p> <p>21 know, there's no set way for a deal to go every time.</p> <p>22 Q Okay. And there's no written policy or</p> <p>23 procedure --</p> <p>24 A No, no written policy, yeah.</p>	<p>41</p> <p>1 Q Okay. Does anyone test drive it?</p> <p>2 A Yes.</p> <p>3 Q Does the appraiser test drive it?</p> <p>4 A Sometimes the appraiser will test drive</p> <p>5 it. Most of the time the salesperson will test drive it.</p> <p>6 Q Okay. And I assume, then, you know,</p> <p>7 whoever's doing the appraisal, just asks the salesperson</p> <p>8 "Is it running okay?"</p> <p>9 A Yeah. Is it running okay? Were there</p> <p>10 any lights on? Check engine lights? Did all the, you</p> <p>11 know, power windows function properly? You know, did it</p> <p>12 pull to the right, pull to the left? Did it have a miss?</p> <p>13 Did the four wheel drive work?</p> <p>14 Q Okay. After the visual inspection and</p> <p>15 the test drive, what's the next step in the appraisal</p> <p>16 process?</p> <p>17 A Well, the next step, you know, is we will</p> <p>18 -- we will try to -- we will determine a, the best we</p> <p>19 can, a market value, actual market value of the vehicle.</p> <p>20 Q Okay.</p> <p>21 A Through the use of NADA books, Black</p> <p>22 books, you know, whatever resources we have available.</p> <p>23 Auction sheets. Whatever resources we have available to</p> <p>24 determine a value.</p>

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1 Q Okay. And if there's a differing value  
2 and, or even slightly in the NADA versus the Black book  
3 versus your knowledge of the market via auction sheets,  
4 you just average those or?  
5 A You -- there's not set way. It's a mind  
6 thing. I mean, it's kind of like estimate -- I mean, I  
7 always -- estimating a, you know, a contracting job.  
8 It's whatever you think that it's going, you know, that  
9 it's worth. Whatever you think you can get out it.  
10 There's no -- Black book doesn't buy  
11 cars. NADA doesn't buy cars. So, I mean, you just, it's  
12 a personal opinion.  
13 Q Arbitrary decision you make, general --  
14 A Yeah. Just arbitrary. There's no  
15 average. No, you know, no set way. Everything has got  
16 its own -- it just comes with years of experience.  
17 Q Okay. And the value that you, or the  
18 number that you come up with at that point in time,  
19 that's -- I can't remember the term you used. Fair  
20 market --  
21 A ACV.  
22 Q -- value?  
23 A ACV.  
24 Q Actual cash value?

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1 A Cash value.  
2 Q Okay. And there's a difference between  
3 ACV and fair market value, isn't there?  
4 A Difference in the wording, but actually  
5 it all comes to the same thing. I mean, it depend. You  
6 can word it --  
7 Q Okay.  
8 A You can make it sound however you want  
9 to, but ACV, actual cash value, wholesale value, fair  
10 market value. A lot of different terms used.  
11 Q And then there's a retail value that  
12 should be in excess of the actual cash value?  
13 A Sure. Absolutely.  
14 Q So once you assess the fair market value  
15 or the value that's going to be assessed to the car, is  
16 that when you -- if you've done that first, is that when  
17 you -- then when you check and see what the payoff is?  
18 A Not necessarily. Sometimes we don't, we  
19 won't get a payoff after -- after we give them figures.  
20 I mean, the payoff could be given -- we'd like, we would  
21 like to have the payoff at that time, but it, we don't  
22 always get it. The payoff is not the most important. At  
23 that time, you calculate your deal.  
24 Q Okay.

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1 A At that time, at that time, you calculate  
2 your one dollar over invoice minus the value you've  
3 determined and then determine your difference figure.  
4 And then if --  
5 Q Okay. And when you say calculating the  
6 deal, that's when you essentially use the four square?  
7 A That's when we use the four square  
8 approach, yes.  
9 Q Okay. On the reverse side of the  
10 worksheet?  
11 A On the reverse side, yeah. We fold the,  
12 fold the worksheet over and we will do the four square on  
13 the reverse side.  
14 Q And it's my understanding that when you  
15 have, when you're selling at the one dollar over invoice,  
16 if there's negative equity in the vehicle, then  
17 essentially, the trade allowance will be inflated over  
18 actual cash value and the price of the vehicle will be  
19 inflated in an equal amount so that there's kind of a  
20 wash before you determine what's actually going to go on  
21 the sales contract?  
22 A Yeah. The difference figure doesn't  
23 change at all.  
24 Q Okay.

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1 A But those numbers will be -- yes.  
2 Q And that's when you present the numbers  
3 to the, the consumer and you agree on them with the four  
4 square?  
5 A With the four square.  
6 Q Okay.  
7 A Correct.  
8 Q And I think you told me that sometimes  
9 that four square is done before you obtain a payoff?  
10 A Sometimes it's done before we obtain a  
11 payoff, yes.  
12 Q Okay. So, I'm curious. How is it that  
13 when you're giving the customer the numbers on the deal,  
14 if you're going to be adjusting the, going to be  
15 adjusting the trade allowance and adjusting the cash  
16 price of the vehicle, you don't know how much to adjust  
17 that until after you've obtained payoff. So how do you  
18 work the work four square with the customer?  
19 A We don't adjust -- that's adjusted in,  
20 those figures are adjusted in finance after the deal's  
21 agreed upon. Because we trade on the difference figure  
22 from the dollar over invoice figure less the ACV and the  
23 difference figure doesn't change. So those figures are  
24 adjusted in the finance department.

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<p>46</p> <p>1 Q So the deal is then going to be cut based</p> <p>2 on -- the deal is going to be cut. The basis of the deal</p> <p>3 is presented to the consumer, and what they're going to</p> <p>4 agree on is not necessarily their trade-in allowance, not</p> <p>5 necessarily the cash value or the cash price of the</p> <p>6 vehicle, but it's going to be the difference between what</p> <p>7 the ACV is and the, the one dollar over invoice price; is</p> <p>8 that correct?</p> <p>9 A Restate your question. You said the</p> <p>10 deal's going to be cut. I don't know what you mean by</p> <p>11 cut.</p> <p>12 Q Well --</p> <p>13 A You mean --</p> <p>14 Q You told me --</p> <p>15 A -- accepted or --</p> <p>16 Q -- the difference doesn't change between</p> <p>17 -- you say you're selling the vehicle based on -- and</p> <p>18 correct me if I'm wrong, but this is what I understood</p> <p>19 you to say.</p> <p>20 You're selling the vehicle based on the</p> <p>21 difference between the actual cash value and the one</p> <p>22 dollar over invoice. That those are the numbers you're</p> <p>23 presenting.</p> <p>24 But those won't change regardless of any</p>	<p>48</p> <p>1 Those are required by the bank in order</p> <p>2 to show -- I'm assuming you're talking about the negative</p> <p>3 equity --</p> <p>4 Q Uh-huh.</p> <p>5 A -- is what your, you know, is what your</p> <p>6 focus is. But, you know, it doesn't cost the customer</p> <p>7 anything to show the figures based on the negative</p> <p>8 equity. They will come out exactly the same, and we're</p> <p>9 required to do that by the banks. They will not allow us</p> <p>10 to show negative equity on a contract.</p> <p>11 Q Is that all the lenders you work with?</p> <p>12 A No, sir.</p> <p>13 Q None of them will let you show negative</p> <p>14 equity?</p> <p>15 A I don't want to say that none of them</p> <p>16 will let us show negative equity. Most of them require</p> <p>17 us not to show negative equity. I'm sure we have a few</p> <p>18 that will allow us to show negative equity.</p> <p>19 But as a general policy, just so that we</p> <p>20 don't make a stake -- mistake, we will try to adjust them</p> <p>21 all not to show negative equity.</p> <p>22 Q Which ones won't allow you to show</p> <p>23 negative equity?</p> <p>24 A I can't give you the specifics on that.</p>
<p>47</p> <p>1 adjustment for negative equity in the trade allowance and</p> <p>2 in the cash price of the vehicle. Do you follow me?</p> <p>3 A Yes, sir.</p> <p>4 Q Okay. And that the four square is where</p> <p>5 you're actually presenting those numbers to the consumer</p> <p>6 and they're going to determine whether or not they want</p> <p>7 to make that deal?</p> <p>8 A Correct.</p> <p>9 Q Okay. So in essence, when they determine</p> <p>10 whether or not they're going to make that deal using the</p> <p>11 four square, it's possible that the cash price of the</p> <p>12 vehicle is going to be more than the cash price of the</p> <p>13 vehicle on the four square, and thus possibly increase</p> <p>14 their monthly payments?</p> <p>15 A It depends how you want to say, in a</p> <p>16 word. It costs the customer nothing at all to adjust the</p> <p>17 figures for the financing. That is done in the finance</p> <p>18 department. The figures do not change as far as what the</p> <p>19 customer is paying whatsoever.</p> <p>20 I mean, there's a lot of word tracks</p> <p>21 there, but, you know, you're -- that is taken to the</p> <p>22 finance based on what we agreed on and it doesn't cost</p> <p>23 the customer anything on how those numbers are put</p> <p>24 together.</p>	<p>49</p> <p>1 You know, I would be guessing. And I, you know, I can't</p> <p>2 give you the specifics.</p> <p>3 Q How many lenders do you work with?</p> <p>4 A We've got approximately ten lenders.</p> <p>5 Q Okay. Well, we know you got Huntington</p> <p>6 Banks.</p> <p>7 A Uh-huh.</p> <p>8 Q BB&amp;T.</p> <p>9 A Uh-huh.</p> <p>10 Q One Valley? That's BB&amp;T now.</p> <p>11 A That's BB&amp;T.</p> <p>12 Q Bank One.</p> <p>13 A Do you want me -- I can probably give you</p> <p>14 a list. GMAC.</p> <p>15 Q Yeah, please.</p> <p>16 A Huntington Banks. BB&amp;T. Bank One.</p> <p>17 Fifth Third. M&amp;T. Arcadia. WFS. Americredit.</p> <p>18 Household Finance. That's approximately ten. I'm sure</p> <p>19 there's a few more --</p> <p>20 Q Okay.</p> <p>21 A -- out there.</p> <p>22 Q Americredit's primarily --</p> <p>23 A Sub.</p> <p>24 Q -- high risk, isn't it?</p>

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<p>50</p> <p>1 A Yes. High risk. Sub prime.</p> <p>2 Q What are the other ones that are sub</p> <p>3 prime?</p> <p>4 A Household, Bank One.</p> <p>5 Q Well, is Bank One -- Bank One does the</p> <p>6 regular financing and sub prime, don't they?</p> <p>7 A Not with us.</p> <p>8 Q Okay.</p> <p>9 A Not, as far as I know, not in the state</p> <p>10 of West Virginia.</p> <p>11 Q Well, how did that list -- I mean you</p> <p>12 guys sell a lot of cars and you've only got ten lenders.</p> <p>13 Which ones have told Thornhill you can't finance negative</p> <p>14 equity or show it in a deal?</p> <p>15 A I can't give you exact list of which</p> <p>16 ones. I mean, I can give you assumptions. I know that</p> <p>17 there's some out there. But I know that we've -- we have</p> <p>18 been told that so we adjust them.</p> <p>19 I don't want to sit and make an error in</p> <p>20 telling you which ones. I could research and give you --</p> <p>21 and get the information as to which ones won't allow it,</p> <p>22 but it, you know, it's most of them.</p> <p>23 Q And you said "we've been told." Who has</p> <p>24 told you?</p>	<p>52</p> <p>1 didn't want to get into the particulars.</p> <p>2 Q Well --</p> <p>3 A And I did not state that, make --</p> <p>4 Q Now when you say you don't want to get</p> <p>5 into particulars, do you mean you don't want to tell me</p> <p>6 more details on that arrangement or -- or details on the</p> <p>7 directives you've been given by the lenders?</p> <p>8 Or you don't want to give me the lenders?</p> <p>9 Or you can't give them to me? You can't remember them as</p> <p>10 you sit here? What do you mean you don't want to get</p> <p>11 into details?</p> <p>12 A I'd be more than happy to give them to</p> <p>13 you, but I can't. I mean, it's not something that I have</p> <p>14 up here in my head. I mean, I'd be more than happy to</p> <p>15 get you the information on which lenders I've got. I'd</p> <p>16 be more than happy to get you a detailed list who will</p> <p>17 take negative equity and who won't.</p> <p>18 Q Okay.</p> <p>19 A I'd be more than happy to provide you</p> <p>20 with that information, but I can't sit here and tell you</p> <p>21 for sure 100 percent which ones will and which ones</p> <p>22 won't.</p> <p>23 Q Okay. And, but the bottom line is, for</p> <p>24 the dealership, that while some may and some won't, you</p>
<p>51</p> <p>1 A Our buyers at the indirect centers. They</p> <p>2 will not cash our contract if we send -- we have had</p> <p>3 contracts sent back to us because they showed negative</p> <p>4 equity and they would not cash or accept a contract with</p> <p>5 negative equity.</p> <p>6 Q And the buyers at the indirect centers,</p> <p>7 is that some sort of an intermediate step between you and</p> <p>8 the lender?</p> <p>9 A Yes. That is our contact at the lender.</p> <p>10 Q Oh, okay. So essentially, it's your</p> <p>11 testimony that negative equity can't be financed without</p> <p>12 adjusting the deal to show something other than what the</p> <p>13 actual values of the deal are?</p> <p>14 A That was putting words --</p> <p>15 MR. BROWN: Let me -- hold on.</p> <p>16 Hold on. Hold on. Let me object, because I think you're</p> <p>17 misstating what he said.</p> <p>18 BY MR. BANDS:</p> <p>19 Q Okay. Go ahead.</p> <p>20 A That's what I was going to say. You're</p> <p>21 putting words in my mouth that I don't like, there. I</p> <p>22 didn't say that equity could not be financed.</p> <p>23 You know, I stated that some banks will</p> <p>24 not let us, you know, would not let us finance it. And I</p>	<p>53</p> <p>1 guys across the board do your deals that way just so you</p> <p>2 won't slip up and possibly send a negative equity deal to</p> <p>3 someone who won't accept it?</p> <p>4 A Correct.</p> <p>5 Q Okay. I'm going to shift gears here just</p> <p>6 a little bit. What, what optional services or products</p> <p>7 does the dealership currently sell?</p> <p>8 A Currently, we sell life insurance, life</p> <p>9 and disability insurance, gap, extended service contract,</p> <p>10 Full Circle Benefit Program, etch or theft deterrent.</p> <p>11 Q Got the systems package?</p> <p>12 A Yes. Yeah.</p> <p>13 Q Is that how that's identified?</p> <p>14 A Yeah.</p> <p>15 Q Do you -- are you still selling that or</p> <p>16 do you just still have that on the books but you don't</p> <p>17 actually actively try to market it?</p> <p>18 A We're still selling it.</p> <p>19 Q Okay.</p> <p>20 A Yeah.</p> <p>21 Q Because we've been told that you don't</p> <p>22 sell it.</p> <p>23 A Okay. We've been selling it. We just</p> <p>24 reimplemented it and we just took a new, we just started</p>

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<p>54</p> <p>1 a new etch program and we, you know, we sold quite a few</p> <p>2 in the last, last week.</p> <p>3 Q Okay. When did you implement it?</p> <p>4 A I think it started, I can't remember the</p> <p>5 exact date. It's approximately a week ago. We just</p> <p>6 redid every, we just did every car on the lot. Put the</p> <p>7 theft on every car on the lot and we just, we just</p> <p>8 implemented the program.</p> <p>9 Q And what third party administers or</p> <p>10 provides that program?</p> <p>11 A Midwest.</p> <p>12 Q Okay. And those are all products, then,</p> <p>13 that as part of the deal that we talked about, kind of</p> <p>14 giving the evolution of the deal, those are sold at the</p> <p>15 back end by the F&amp;I department when they're actually</p> <p>16 doing the paperwork and closing the deal?</p> <p>17 A Correct.</p> <p>18 Q Okay. Back to desking, when you're</p> <p>19 desking and you got the worksheet and you got the four</p> <p>20 square, and you come up with whatever the person's</p> <p>21 agreeable to, and essentially, and correct me if I'm</p> <p>22 wrong, you're basically telling me that they're agreeable</p> <p>23 to whatever the difference in trade value, that they're</p> <p>24 -- or the actual cash value and the one dollar over</p>	<p>56</p> <p>1 Q Yeah, if they're upside down.</p> <p>2 A Tax, title, license, you know, pay off.</p> <p>3 Q Well, if they're upside down, that's the</p> <p>4 adjustment and what you're telling me is that if they're</p> <p>5 upside down, it doesn't really make a difference because</p> <p>6 it's going to be adjusted for and that still that</p> <p>7 difference, it's not going to change regardless of what</p> <p>8 it says on the sales contract with the trade allowance</p> <p>9 and the price of the vehicle.</p> <p>10 A Once the -- yeah. The difference doesn't</p> <p>11 change.</p> <p>12 Q Okay. At what point is the invoice price</p> <p>13 of the vehicle shared with the consumer?</p> <p>14 A At most points, it's disclosed right --</p> <p>15 it depends on when they ask for it. At most points, it's</p> <p>16 disclosed right up, right at the beginning.</p> <p>17 A lot of times, we'll show both ways. I</p> <p>18 think on the Barker case, in particular, we showed the</p> <p>19 retail and the dollar over invoice and sometimes it'll be</p> <p>20 disclosed a little later in the, in the process.</p> <p>21 Q Okay. So it can be disclosed after the</p> <p>22 four square?</p> <p>23 A It can be disclosed after the four</p> <p>24 square.</p>
<p>55</p> <p>1 invoice.</p> <p>2 That's, in essence, what they're going to</p> <p>3 have to pay out-of-pocket or finance over and above their</p> <p>4 trade; right?</p> <p>5 A Restate the question so I fully</p> <p>6 understand what you're wanting from me.</p> <p>7 Q I think what you've told me is that the</p> <p>8 -- when you're doing your four square worksheet and you</p> <p>9 are at the desking stage, that once the four squares are</p> <p>10 drawn out and the pages folded back and the salesperson</p> <p>11 and/or the desking person is using that to negotiate with</p> <p>12 the customer, the important figures are the value of the</p> <p>13 trade that's assessed during appraisal --</p> <p>14 A Correct.</p> <p>15 Q -- and the one dollar over invoice cost</p> <p>16 of the vehicle. And then the difference between those</p> <p>17 two numbers is essentially what they're going to pay out-</p> <p>18 of-pocket over and above their trade; absent any extras</p> <p>19 they may buy in F&amp;I?</p> <p>20 A Correct.</p> <p>21 Q Okay.</p> <p>22 MR. BROWN: Well, and what they</p> <p>23 may owe on the car.</p> <p>24 BY MR. BANDS:</p>	<p>57</p> <p>1 Q Were you the desking manager on the</p> <p>2 Barker invoice, on the Barker transaction?</p> <p>3 A On one of them, I think I was. On the</p> <p>4 van deal.</p> <p>5 Q The May 22nd, 2000?</p> <p>6 A I don't have the date.</p> <p>7 Q The first one?</p> <p>8 A I think it was the first one, yes, sir.</p> <p>9 Q Okay. That's how I identify it. The</p> <p>10 first one or the second one. So that's, maybe it's</p> <p>11 easier that way.</p> <p>12 There's also something on -- well,</p> <p>13 there's the checklist. The deal checklist.</p> <p>14 A Uh-huh.</p> <p>15 Q Based on what you're telling me, it</p> <p>16 sounds like the dealer checklist, which is to accompany</p> <p>17 the file at the close of the deal and which is used</p> <p>18 throughout the transaction process to make sure all of</p> <p>19 the steps are followed or marked out if they're not</p> <p>20 applicable, that there are some -- even though that's</p> <p>21 checklist is completed at the F&amp;I stage, that there are</p> <p>22 some activities preceding the F&amp;I stage that are</p> <p>23 addressed on the checklist. Do you understand my</p> <p>24 question?</p>

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<p>58</p> <p>1 A The checklist is more for after the --</p> <p>2 after the deal to make sure that all the proper</p> <p>3 documentation and everything's done. It's an F&amp;I</p> <p>4 checklist --</p> <p>5 Q Okay.</p> <p>6 A -- is what it is.</p> <p>7 Q Okay. So F&amp;I uses that after the deal is</p> <p>8 closed to make sure that when they go through their</p> <p>9 paperwork, they've got everything they need?</p> <p>10 A Yes.</p> <p>11 Q Okay. And on that checklist, it makes a</p> <p>12 reference to the invoice letter?</p> <p>13 A Correct.</p> <p>14 Q An item on an invoice letter. Okay.</p> <p>15 When I asked you about the -- when the invoice price is</p> <p>16 provided, you said at the beginning of the process. Did</p> <p>17 you mean when they're first being talked to on the lot or</p> <p>18 at the beginning of the desking process?</p> <p>19 A It could be at the -- they could be on</p> <p>20 the lot. It could be at the beginning. It could be in</p> <p>21 the desking process. It could be disclosed in the</p> <p>22 finance department.</p> <p>23 Q Okay. So it could, that invoice could</p> <p>24 actually be disclosed in the finance department after</p>	<p>60</p> <p>1 A No, sir.</p> <p>2 Q So I have no way of knowing, if I'm a</p> <p>3 customer, what the actual dollar over invoice cost of</p> <p>4 that vehicle will be until possibly I've already gone</p> <p>5 through the whole process and reached F&amp;I?</p> <p>6 A Correct.</p> <p>7 Q And that's when it's time to execute the</p> <p>8 documents?</p> <p>9 A Correct.</p> <p>10 Q Approximately how many documents are</p> <p>11 there in the average transaction, assuming it involves a</p> <p>12 trade?</p> <p>13 A I'd have to count. If I was -- I've</p> <p>14 heard 40, 35 or 40.</p> <p>15 Q Does that sound about right to you?</p> <p>16 A That could be very close, yes.</p> <p>17 Q Okay. Do you know about how many</p> <p>18 vehicles you sell a day?</p> <p>19 A It depends on the, it depends on the day</p> <p>20 and depends on the year. I mean, it --</p> <p>21 Q Yeah. It could vary?</p> <p>22 A It could vary.</p> <p>23 Q How long's the average F&amp;I closing?</p> <p>24 A Approximately one hour. Forty-five</p>
<p>59</p> <p>1 you've already gone through the four square analysis and</p> <p>2 figures have been agreed to?</p> <p>3 A Correct.</p> <p>4 Q If a customer walks onto your lot and</p> <p>5 they see, you know, a nice, new vehicle that they're</p> <p>6 interested in. They want to know how much it is or get a</p> <p>7 feel for it. They go over. They look at the vehicle.</p> <p>8 Are there stickers in the window?</p> <p>9 A Yes, sir.</p> <p>10 Q Okay. Now the sticker that is in the</p> <p>11 window for a new vehicle at your lot, what -- what is</p> <p>12 that sticker? Is that a sticker that has everything</p> <p>13 included in the vehicle and an MSRP on it?</p> <p>14 A Correct.</p> <p>15 Q Okay. So it doesn't have anything about</p> <p>16 the invoice price on the sticker?</p> <p>17 A No, sir. That's provided by General</p> <p>18 Motors. That's the MSRP.</p> <p>19 Q Okay. And so those are -- those are put</p> <p>20 on the vehicle either prior to or during transit before</p> <p>21 you guys get them?</p> <p>22 A Yes, sir.</p> <p>23 Q Do you put anything on the vehicle in any</p> <p>24 way to show what the actual invoice was?</p>	<p>61</p> <p>1 minutes to one hour.</p> <p>2 Q Why don't you, from the -- let's back up</p> <p>3 to desking when the four square and worksheet procedure</p> <p>4 is taking place, and somebody says, "Yeah. I want this</p> <p>5 vehicle. Let's move to the next stage."</p> <p>6 Is there anything else that happens at</p> <p>7 desking? At the desking stage?</p> <p>8 A No.</p> <p>9 Q So, and at that point, the salesman has</p> <p>10 no further contact?</p> <p>11 A At that time, the salesperson turns it</p> <p>12 over to a finance manager.</p> <p>13 Q Okay. And in the, in the interim in</p> <p>14 desking, it can be the desking and/or the salesperson</p> <p>15 involved?</p> <p>16 A Correct.</p> <p>17 Q And it's possible that a customer will</p> <p>18 never even meet or speak to the desking manager?</p> <p>19 A Correct.</p> <p>20 Q And once that decision's made, the</p> <p>21 salesperson takes the customer to the door, glass office,</p> <p>22 there's the F&amp;I guy, and essentially says, "Here's a</p> <p>23 customer. We've agreed to buy this vehicle, agreed to</p> <p>24 sell him this vehicle. Take it over at the F&amp;I stage?"</p>

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<p>62</p> <p>1 A Yeah.</p> <p>2 Q Okay.</p> <p>3 A It's similar. I mean, the way it will</p> <p>4 work is the salesperson will actually take the</p> <p>5 information to the finance manager and provide him with</p> <p>6 all the information and the finance manager will</p> <p>7 generally tell him when he's ready for the customer.</p> <p>8 Q Okay. What information does the salesman</p> <p>9 take in to the Finance Manager?</p> <p>10 A He'll take, you know, all the mileage,</p> <p>11 the insurance information, the registration card. You</p> <p>12 know, all the things that are needed to complete the</p> <p>13 deal.</p> <p>14 Q That's on the trade?</p> <p>15 A Yeah. Copy, well a copy of -- on the</p> <p>16 new. You need miles on the one he's buying.</p> <p>17 Q Okay.</p> <p>18 A If there's a trade on that one,</p> <p>19 registration card on the trade. You need the insurance</p> <p>20 information. All the information that's, you know, just</p> <p>21 needed to complete the deal.</p> <p>22 Q Well, that information is the particular</p> <p>23 registration and physical characteristic information of</p> <p>24 the trade and/or the new vehicle. What other information</p>	<p>64</p> <p>1 like that. Possibly a credit app, but if the credit app</p> <p>2 isn't done, that's going to be done at the F&amp;I stage.</p> <p>3 Walk me through the F&amp;I stage.</p> <p>4 A Generally, the F&amp;I stage, generally the</p> <p>5 credit application is done prior to the F&amp;I stage. The</p> <p>6 credit application is taken in and then the customer is</p> <p>7 taken into the finance office.</p> <p>8 Into the finance office, and the finance</p> <p>9 manager will discuss the financial arrangements with the</p> <p>10 customer. He'll make available all the different</p> <p>11 programs that we have. The extended service contracts,</p> <p>12 the life insurance, the life and disability, the gap</p> <p>13 protection and the etch.</p> <p>14 They'll discuss all the programs and</p> <p>15 present it to it and make all the arrangements, agreeing</p> <p>16 on terms and rate and monthly payment and what protection</p> <p>17 packages that the customer wants. And they will agree.</p> <p>18 Once they agree upon a term and</p> <p>19 everything's agreed upon, then they will print and</p> <p>20 disclose all the documents.</p> <p>21 Q Okay. So, for instance, a financing</p> <p>22 agreement isn't presented to the customer essentially in</p> <p>23 its final form or near final form until it comes time to</p> <p>24 execute the document?</p>
<p>63</p> <p>1 does the salesman give to the F&amp;I?</p> <p>2 A Credit application.</p> <p>3 Q Okay. And I assume that the credit</p> <p>4 application is filled out by the customer while they're</p> <p>5 in the desking stage?</p> <p>6 A The salesperson will take the credit</p> <p>7 application, yes.</p> <p>8 Q Okay. And that's a document that's in</p> <p>9 addition to the worksheet information?</p> <p>10 A In addition to the worksheet. That can</p> <p>11 be taken during the desking stage, after the desking</p> <p>12 stage, you know, it's various times.</p> <p>13 You know, everything's different.</p> <p>14 There's no, you know, no set thing to where you have to</p> <p>15 have a credit application to get figures or, you know, it</p> <p>16 sometimes can be taken first. Sometimes can be taken</p> <p>17 last. Sometimes can be taken in the middle.</p> <p>18 Q Okay.</p> <p>19 A No set.</p> <p>20 Q So sometimes the credit application would</p> <p>21 just be done at the F&amp;I stage?</p> <p>22 A Yes, correct.</p> <p>23 Q So the commencement of the whole F&amp;I</p> <p>24 stage is delivery of odometer statements, other things</p>	<p>65</p> <p>1 A That's agreed upon -- agreed upon between</p> <p>2 the customer and the finance manager.</p> <p>3 Q Verbally, but they don't actually see a</p> <p>4 copy of the contract until it's time to sign?</p> <p>5 A Not anymore. We don't, we were, we were</p> <p>6 under -- we had to do that before. We had to present</p> <p>7 them a copy of the contract, but we don't have to do that</p> <p>8 anymore.</p> <p>9 Now, we were presenting them with a copy</p> <p>10 of the contract before we actually executed the</p> <p>11 documents, but we don't have to actually present them</p> <p>12 with that copy of the contract anymore. I think that law</p> <p>13 was repealed.</p> <p>14 Q Okay. And that's a dealer requirement?</p> <p>15 A I'm not sure of the name of it. We</p> <p>16 depend on --</p> <p>17 MR. BROWN: The Polk case.</p> <p>18 THE WITNESS: Yeah. We depend on</p> <p>19 our attorneys and associations to tell us when we have to</p> <p>20 do that. The one we were told to do that, we did provide</p> <p>21 them with a, you know, with a contract prior to look at.</p> <p>22 BY MR. BANDS:</p> <p>23 Q Okay.</p> <p>24 A We no longer do that.</p>

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<p>66</p> <p>1 Q Okay. At what point did you stop doing 2 it?</p> <p>3 A Probably, probably after everybody else 4 finally told us two or three times that they didn't. And 5 I think Johnnie's the one that told us we could finally 6 quit doing that. And that was probably two months ago? 7 Two or three months ago. I would guess.</p> <p>8 Q Okay. Okay. Most people, if they're 9 going to purchase one of the optional products or 10 services, be it a extended service contract or one of the 11 insurance life, life, health, disability, or gap or even 12 the Full Circle Benefits Program, they're going to 13 finance those items as part of their entire deal, aren't 14 they? Isn't that what you generally see?</p> <p>15 A In most cases, yes.</p> <p>16 Q I mean, if they're financing the vehicle, 17 they're not going to pay cash for the contract; right?</p> <p>18 A In most cases, right. They would get it 19 involved in the financing.</p> <p>20 Q Or an insurance.</p> <p>21 A Correct.</p> <p>22 Q Well, how can you come to an agreement or 23 even a suggestion as to credit terms, you know, monthly 24 payments, interest rate, total payment, anything like</p>	<p>68</p> <p>1 me?</p> <p>2 A Correct. Yeah.</p> <p>3 Q Okay. And I guess my question is, if 4 there are -- if there are aspects of the credit terms 5 that may be affected by the purchase of an optional 6 service or product depending on the cost of that product, 7 how can you come to an agreement on terms before you know 8 whether or not they want to buy that product?</p> <p>9 A It's discussed with the customer how that 10 product will affect their monthly payment based on the 11 term. I mean, they will be given several different --</p> <p>12 Q Okay.</p> <p>13 A -- you know, options. They will, you 14 know, what protection services, you know, what protection 15 packages that they would desire to purchase. And they 16 will, you know, inform them what that will do to their 17 term and monthly payment.</p> <p>18 You know, they will come to an agreement. 19 It's just basically negotiating. And, you know, once it 20 will, you know, the customer will say, you know, "Well, 21 what is my payment with the extended service contract and 22 the gap on 66 months?" I mean, you know --</p> <p>23 Q Okay.</p> <p>24 A -- it's just common negotiating and, you</p>
<p>67</p> <p>1 that, how can you come to that agreement before you've 2 already presented the options and people have made a 3 decision by -- how can you present credit terms that are 4 at least partially dependent on some of these amounts 5 before you go over these products?</p> <p>6 MR. BROWN: Let me just state an 7 objection that your use of the word "credit terms" might 8 be a little ambiguous.</p> <p>9 MR. BANDS: Well, then how --</p> <p>10 MR. BROWN: Because the rate would 11 not change, obviously.</p> <p>12 MR. BANDS: Okay.</p> <p>13 MR. BROWN: Just, I want to be 14 careful there. That has a lot of implications.</p> <p>15 BY MR. BANDS:</p> <p>16 Q This, what I'm asking, I guess, is the -- 17 when you told me the, kind of the order of what's going 18 to go on in F&amp;I, the first thing you told me about was 19 that you go over the credit terms.</p> <p>20 And then you said, "Then we present, you 21 know, the various other products we have and we see if 22 there's an agreement on that. And then we reach a deal 23 or we don't. And then all the documents are printed up 24 and executed." Is that what you -- that's what you told</p>	<p>69</p> <p>1 know, the customer will agree upon that, you know, that 2 term and that payment. He may say, "Well, what is it on 3 66?" or "What is it on 72? What would it be if I would 4 go on, you know, on 60?" It just --</p> <p>5 Q Well, so in essence, it's not a, it's not 6 a segmented process? It's "We're going to sit down. 7 We're going to talk credit terms here, products. This is 8 how they may change."</p> <p>9 There's not a -- an agreement as to 10 credit terms before you get into optional services or 11 products?</p> <p>12 A Correct.</p> <p>13 Q Okay.</p> <p>14 A Correct. It's all discussed at one, at 15 one time.</p> <p>16 Q Okay.</p> <p>17 MR. BROWN: Let me just state an 18 objection that credit terms, that hasn't been defined yet 19 and I'm afraid that just using that word loosely may be 20 ambiguous.</p> <p>21 BY MR. BANDS:</p> <p>22 Q Okay. Well, we'll back up. I'll just 23 ask you. What numbers do people have to agree with 24 insofar as financing when they're walking through the F&amp;I</p>

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<p>70</p> <p>1 process and a deal at Thornhill?</p> <p>2 I assume that they have to come up with,</p> <p>3 first of all, they need to know what their monthly</p> <p>4 payment is.</p> <p>5 A (Witness nods affirmatively.)</p> <p>6 Q Number of, number of monthly payments.</p> <p>7 A (Witness nods affirmatively.)</p> <p>8 Q The interest rate; correct?</p> <p>9 A Uh-huh.</p> <p>10 Q Okay. And let the record show that</p> <p>11 you've nodded your head as I've said these, so you're</p> <p>12 agreeing with me? Because remember, we need a verbal</p> <p>13 response.</p> <p>14 A Sure. I'm listening to your -- trying to</p> <p>15 fully understand your question before I answer --</p> <p>16 Q Well, I'm just making sure --</p> <p>17 A -- because I'm not an attorney, I want to</p> <p>18 make sure I --</p> <p>19 Q Well, you know --</p> <p>20 A -- fully understand.</p> <p>21 Q -- based on counsel's objection of the</p> <p>22 ambiguity of the term, I just want to make sure that you</p> <p>23 and I are on the same page as what credit terms mean.</p> <p>24 MR. BROWN: Bill, if it helps, I</p>	<p>72</p> <p>1 Q I'm just trying to get through this</p> <p>2 sequence of events and --</p> <p>3 A Okay.</p> <p>4 Q -- you know, to better understand what's</p> <p>5 going on in the F&amp;I process.</p> <p>6 A Better understanding the process of what</p> <p>7 goes in. They will make, when they go in to the, after</p> <p>8 the desking of the deal, they're turned over to the</p> <p>9 finance department. And that's where the financial</p> <p>10 arrangements are made, are made on the deal.</p> <p>11 I mean, it's basically as though as we</p> <p>12 act as an agent for the bank. It would be just like</p> <p>13 going to the bank and making a home loan. You know,</p> <p>14 "Well, what's my payment going to be?"</p> <p>15 "Well, how many months do you want to</p> <p>16 go?"</p> <p>17 "I want to know what would it be on ten</p> <p>18 years? What would it be on 15 years?"</p> <p>19 I know we're not talking about mortgage.</p> <p>20 But I mean, it would be customer -- what, you know, the</p> <p>21 first question and in most cases is "What's my payment?"</p> <p>22 Okay. How many months, you know, "How</p> <p>23 many months do you want to go? Here's the protection</p> <p>24 packages that I have. How do you want" -- you know, can</p>
<p>71</p> <p>1 don't think the interest rate changes.</p> <p>2 MR. BANDS: Okay.</p> <p>3 MR. BROWN: I agree with that. I</p> <p>4 just don't want there to be some implication that</p> <p>5 depending on whether or not you buy a product, you get a</p> <p>6 -- somehow your credit rates or credit terms change and</p> <p>7 all the implications that go with that. I -- that's all</p> <p>8 I was trying to make sure of.</p> <p>9 BY MR. BANDS:</p> <p>10 Q Okay. Well, then on terms, I mean</p> <p>11 essentially, it's the four to five boxes across the top</p> <p>12 of a financing agreement, and the box directly below it</p> <p>13 which is going to give you your payment schedule. And</p> <p>14 when I say the five boxes, I mean where there's a --</p> <p>15 A Federal disclosure boxes --</p> <p>16 Q Federal disclosure --</p> <p>17 A -- that's what you're talking about.</p> <p>18 --Q Percentage rate, amount financed. You</p> <p>19 tell me.</p> <p>20 A You've kind of got me. I mean, I almost</p> <p>21 would like to start over with where -- I don't understand</p> <p>22 where you'll trying to take me or --</p> <p>23 Q I'm not trying to take you anywhere.</p> <p>24 A Okay.</p>	<p>73</p> <p>1 figure this several different ways. "Let me go over this</p> <p>2 with you," you know. And, "Let's structure this the way,</p> <p>3 you know; you want it."</p> <p>4 They'll go over the packages and the</p> <p>5 customer will say, "Well, what is the payment on 60</p> <p>6 months with, you know, the extended service contract and</p> <p>7 the, you know, and the gap?"</p> <p>8 They will completely go through until</p> <p>9 they, you know, until the customer is in total agreement</p> <p>10 and fully understands everything.</p> <p>11 That negotiation process could take, you</p> <p>12 know, ten, fifteen minutes or it could be, you know,</p> <p>13 several minutes. He could want to go into detail. You</p> <p>14 know, much depends on how much detail they want to go</p> <p>15 into on, you know, all the different combinations.</p> <p>16 Some of them will pretty well know, you</p> <p>17 know, when they come in. They've bought cars before and</p> <p>18 they say, "When I buy my cars, I buy the extended service</p> <p>19 contract. I won't buy it without life and disability.</p> <p>20 You know, that's the way I want it."</p> <p>21 Some will say, "Well, I'm not sure. What</p> <p>22 is, you know, gap insurance?" But all those will be</p> <p>23 discussed and the customer will determine what he wants</p> <p>24 and what term he wants. And then once that's agreed</p>

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<p>74</p> <p>1 upon, then all the documents will be executed and, you 2 know, and fully disclosed. 3 Q Okay. And when you use the term 4 financial arrangements. I use the term credit terms, 5 that may be, that may be our meeting of the minds, I 6 think. 7 That we're talking essentially about the 8 numbers that the customer is obligating himself to as far 9 as monthly payments. You know, percentage rates, total 10 he's going to have to pay, the cost of credit, you know 11 what his finance -- 12 A Right. 13 Q -- charge is. 14 A The cost of the extra products. 15 Everything. 16 MR BANDS: Just for a second. I 17 need to get some water. I've got a -- 18 MR. BROWN: Yeah. That'd be 19 great. 20 MR. BANDS: So you want to take 21 just a little break? 22 MR. BROWN: Yeah. 23 (WHEREUPON, a recess was taken, 24 after which the following</p>	<p>76</p> <p>1 executed and consummated. 2 Q Okay. Just to back up a little bit. We 3 were talking about the appraisal process and the ACV 4 that's assigned to the trade. Where do you document the 5 ACV in the, in the -- in the deal file? 6 A It's not documented in the deal file. 7 Q Okay. Where is it documented? 8 A It's documented -- the sales manager, the 9 deal desk will actually have it documented and put the 10 deal down and he'll put it in. It'll be put in the deal 11 after the deal is closed and brought back to him to 12 close. 13 Occasionally, it will be written on an 14 appraisal sheet. Sales managers do it different, but 15 there's not a, you know, not, it's not always on a -- 16 not a written statement. 17 Q Okay. Well, just to back up so to make 18 sure I understand, once the appraisal's done, there can 19 be an appraisal sheet? 20 A Yes. 21 Q Okay. Is there a policy of the 22 dealership for completing appraisal sheets? 23 A Yes. Appraisal sheet's supposed to be 24 completed.</p>
<p>75</p> <p>1 proceedings were had.) 2 VIDEOGRAPHER: We're back on -- 3 BY MR. BANDS: 4 Q Mr. Nisbet, I think we -- 5 VIDEOGRAPHER: I'm sorry. We're back 6 on the video record. This is Tape 2 of the video 7 deposition of George Nisbet. 8 BY MR. BANDS: 9 Q Mr. Nisbet, we were, I believe, right 10 when we left for the break, you were finishing up telling 11 me kind of the procedures of what goes on in the F&amp;I end 12 of the deal. 13 And essentially, then I think we kind of 14 had a little misunderstanding, but we basically came to 15 agreement and boiled it all down that there's some give 16 and take in the process and negotiation and certain 17 financing arrangements, or I called them credit terms are 18 discussed and various options are explored with regard to 19 the financing based on whether or not they want to 20 consider optional products. 21 And then ultimately, an agreement is 22 struck and then the deal documents are printed off and 23 signed; is that correct? 24 A Yeah. Deal documents are, the deal is</p>	<p>77</p> <p>1 Q Okay. And that's for anybody doing an 2 appraisal? Any of the desk personnel? 3 A Yeah. It's for the salespeople that 4 actually fill out the sheet and they hand it to the desk 5 for the appraisal. 6 Q Okay. Well now, just to back up a 7 second. When I'm talking about appraisal sheet, I'm 8 talking about some sort of a written document that's 9 going to indicate what you found during your appraisal, 10 what you ultimately come to as a final ACV. Is that your 11 understanding of the appraisal sheet? 12 A The appraisal sheet is the information 13 that, you know, that, that is on the car. The miles, the 14 engine, and, and that type of thing, yes. 15 Q Okay. And then ultimately then, is an 16 ACV put on that appraisal sheet? 17 A Everyone does it different. Mr. Neal 18 will generally put his appraisal on the appraisal sheet. 19 I generally don't. I generally just keep mine in my head 20 and will do it in my head. 21 Q Okay. 22 A And not write it down. So everyone does 23 it different. 24 Q So when you're calling in an appraisal</p>

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<p>78</p> <p>1 sheet, it's more or less a document that gathers 2 information that goes into the appraisal, but it's not 3 actually something that shows what the appraised value 4 was?</p> <p>5 A Correct.</p> <p>6 Q And Mr. Neal sometimes writes them down. 7 Your practice generally isn't to?</p> <p>8 A Yeah. I generally don't write them down. 9 And I, I think he generally does write them down.</p> <p>10 Q Okay. And then you mentioned that we 11 walk through the process and, you know, the appraisal 12 figure in, in your case would be in your head. Mr. Neal 13 has it written down.</p> <p>14 But in any event, it's used as at least 15 an important figure to figure out where the deal is going 16 to go and how it's going to come out for the consumer.</p> <p>17 Then you mentioned that at the end, you 18 got kind of ahead of me. At the end, it is documented 19 and put in the deal file at the end?</p> <p>20 A Correct.</p> <p>21 Q Okay. Tell me about that. How does that 22 work?</p> <p>23 A Well, the appraisal can change, you know, 24 throughout the deal. I mean, you know, as you negotiate.</p>	<p>80</p> <p>1 Q Okay. When that used vehicle that's 2 traded in is booked into the general ledger of the firm, 3 or of the -- well, the firm or the company of the 4 dealership, what's it booked in at?</p> <p>5 Is it booked in at the ACV that's put on 6 the form at the end? Or is it booked in at what you guys 7 actually think it's worth?</p> <p>8 A It's booked in at the four, the figure 9 that's put in at the end is what it's booked in at the 10 firm.</p> <p>11 Q Okay. So if you look at a vehicle and 12 you say it's worth 15,000, and they ultimately negotiate 13 you to go to sixteen, and you assign that ACV, you don't 14 necessarily make another \$1,000.00 trade allowance. You 15 actually change the ACV number?</p> <p>16 A Correct.</p> <p>17 Q Okay. And that's what's booked in 18 regardless of what you felt it was worth at the 19 beginning?</p> <p>20 A Correct.</p> <p>21 Q Okay.</p> <p>22 A That can, figure can vary sometimes. I 23 might be negotiated up to sixteen. I may not book the 24 whole thing at sixteen. I may show it at fifteen-five to</p>
<p>79</p> <p>1 Let's say for example, just to use examples. Let's say 2 I've got an ACV at \$5,000.00 and you're trading in your 3 vehicle and you think it's worth, you know, worth more 4 than that.</p> <p>5 I mean, I may decide in the deal to, you 6 know, that instead of putting five grand in your car, 7 that I'm going to put 55 hundred in it.</p> <p>8 Or if, you know, it might determine that 9 I'm going to have to put six grand in your car to put, 10 you know, to put the deal down. That's why I don't 11 necessarily write it down.</p> <p>12 But whatever that figure is, is what will 13 go, you know, what will go in. There's a place in the 14 computer when we do our close-out sheet that you put the 15 ACV in.</p> <p>16 Q Okay. And that's on the Reynolds and 17 Reynolds program?</p> <p>18 A Yes. Correct.</p> <p>19 Q Okay. And that ACV may be the value that 20 you assigned initially. It may be something that was 21 negotiated up by the consumer?</p> <p>22 A The value at the end of the deal that, 23 that the sales manager has determined the car to be 24 worth. The actual cash value of the car.</p>	<p>81</p> <p>1 show a, you know, to show a little bit of a, you know, a 2 little bit of a loss. It's just whatever you have to do 3 to close the deal.</p> <p>4 Q Now when the ACV is put into the -- I 5 can't remember what you called it. When it's entered 6 into the computer.</p> <p>7 A Close-out.</p> <p>8 Q Close-out. Okay. Now when you say 9 close-out, is that a close-out form or is that a close- 10 out activity or a group of activities or -- define for me 11 what you mean by close-out.</p> <p>12 A Close-out is where the deal is actually 13 closed in the computer and it transfers all the numbers 14 to the accounting system. And then the, you know, the 15 bookkeeper will actually -- puts the vehicle, the trade- 16 in in inventory and takes the vehicle you sold out of the 17 inventory and puts all of the numbers in there to where 18 the accountants can do what they need to do with it.</p> <p>19 Q Okay. And that close-out, then, is 20 something that, that is undertaken after execution of the 21 sales agreement and the financing agreement and the 22 myriad of other documents that go into the deal?</p> <p>23 A Correct.</p> <p>24 Q Is there a computer print-out of that</p>

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<p>82</p> <p>1 close-out worksheet or form that goes -- a hard copy goes 2 into the deal file? 3 A Correct. 4 Q Okay. Excuse me. And that's where the 5 ultimate ACV is going to be documented? 6 A Correct. 7 Q And if the ACV didn't change from the 8 initial appraisal all the way through the process, that's 9 also going to be the appraised value? 10 A The ACV appraised values and -- 11 Q Okay. 12 A -- all the -- 13 Q But we've already, we've established that 14 your initial appraisal sometimes may differ if you decide 15 it's important for the deal and you want to dicker with 16 the customer? 17 A Sure. 18 Q Okay. So at the front end when you do an 19 appraisal, is there any document of the initial ACV 20 that's assigned to the vehicle? 21 A As I answered the question before, Mr. 22 Neal sometimes will document his, but I generally don't 23 document mine, to repeat the same answer. 24 Q Okay. Well, so then at the end of the</p>	<p>84</p> <p>1 don't understand your question exactly. 2 Q Okay. Well, when -- at the beginning of 3 the deal -- 4 A Uh-huh. 5 Q -- when the appraisal's done, the what we 6 call the appraisal sheet when we were talking before, 7 that doesn't ultimately have an appraisal on it but has 8 the information about the vehicle. 9 That's given to the desking manager. He 10 looks at the vehicle. Salesman may test drive it. 11 There's a discussion and then an ACV is assigned. It's 12 the result of the appraisal? 13 A Correct. 14 Q Right? Then, as the negotiating 15 procedure progresses, you've told me that it's possible 16 the consumer may say, "Well, I think it's worth sixteen," 17 and you'll decide to give him that. And then you will 18 change the ACV to reflect the amount that you're going to 19 give him for it. 20 A Correct. 21 Q Okay. And ultimately that final ACV, 22 whether it's negotiated up from the initial appraisal or 23 whether it stayed the same, is what is ultimately 24 reflected in the deal file?</p>
<p>83</p> <p>1 deal when that ultimate ACV is entered and it's printed 2 out, the only record, either in the computer or in 3 writing, assuming somebody like Mr. Neal didn't write it 4 down, of what you guys felt that vehicle was worth 5 initially, is -- let me rephrase that. I kind of got 6 lost. I apologize. 7 At the very end, when you hit the close- 8 out screen and you print that off, that ACV is the 9 ultimate ACV. 10 So if, in effect, you appraise the 11 vehicle at less and then negotiated the ACV higher, there 12 may be absolutely no record of what your appraisal was at 13 the beginning? 14 A I don't understand exactly where you're 15 going. If it was less and then it may be higher. 16 Q Okay. 17 A I mean, it's one figure. It's not less 18 or higher. It's what -- the ACV, the appraisal, is what 19 it is. It's not less or higher. 20 Q Yeah, but it changes as you told me; 21 right? It's possible for it to change? 22 A But it's not what it is or what it was. 23 What it finishes up is what the actual ACV -- we 24 determine, you know, what we determine the actual ACV. I</p>	<p>85</p> <p>1 A Correct. 2 Q Okay. So if, in fact, it is a -- it is 3 negotiated up, the ACV is negotiated up, there's no 4 record of your initial evaluation of the vehicle unless 5 somebody actually wrote it down at that time? 6 A Correct. 7 Q Okay. And so in essence, there's really 8 no record of the initial appraisals anywhere unless it's 9 a circumstance where someone like, well you said Mr. 10 Neal, he'll write it down? 11 A Correct. 12 Q Ultimately when everything shakes out and 13 you look at a deal or you examine, you know, the 14 performance on a deal and the ACV's entered into the 15 general ledger on the deal or on a group of deals, how 16 can you go back and determine how well you did on the 17 deal if you've actually backed off your initial valuation 18 of the vehicle based on make, model, year, mileage, NADA 19 information, Blue Book information, your own personal 20 information from auctions and your own experience that 21 goes in the initial valuation? 22 I mean, how can you tell how well you did 23 on the deal? Because if you're actually going to give 24 him more and book it in more, you don't know that --</p>

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<p>86</p> <p>1 MR. BROWN: I think I'm going to</p> <p>2 have to object to that question.</p> <p>3 MR. BANDS: Am I rambling? Am I</p> <p>4 rambling late in the day? Tongue tied? Even I can get a</p> <p>5 smile out of Charlie on that one. I should have stopped</p> <p>6 when I was ahead.</p> <p>7 MR. PICCIRILLO: Off the record.</p> <p>8 (WHEREUPON, a discussion</p> <p>9 was had off the record.)</p> <p>10 BY MR. BANDS:</p> <p>11 Q Let's -- I guess what I'm asking is --</p> <p>12 A What's the stock market doing today? Is</p> <p>13 it up or down?</p> <p>14 MR. BROWN: I think he's trying to</p> <p>15 make a point.</p> <p>16 BY MR. BANDS:</p> <p>17 Q I know. I know. I guess what I was</p> <p>18 asking is, if you don't have a record of the initial</p> <p>19 appraisal, which is what you feel to be the actual worth</p> <p>20 of the vehicle, and then you turn around -- if you think</p> <p>21 it's worth fifteen, and you ultimately have an ACV of</p> <p>22 sixteen, and you sell it for eighteen.</p> <p>23 Well, with your ACV booked in, you've</p> <p>24 only made a profit of two. But based on your valuation,</p>	<p>88</p> <p>1 sure say, "Boy, we wish wouldn't have put that extra</p> <p>2 \$1,000.00 in that car."</p> <p>3 Matter of fact, we wished even the figure</p> <p>4 -- that they wouldn't have bought at the figure we did</p> <p>5 because we sometimes will lose \$2,000.00 on that car.</p> <p>6 But, you know, you'll look at the overall</p> <p>7 package, you know, and putting money in a car is like</p> <p>8 buying stock. You have no idea. I mean today, you have</p> <p>9 zero percents and, you know, you put in one car what you</p> <p>10 think the value is today.</p> <p>11 I mean, you know, it's just like that</p> <p>12 stock. I can, you know, I can -- that tells me what</p> <p>13 they're going to pay for that share of stock today, but I</p> <p>14 have no guarantee tomorrow if that stock's going to go up</p> <p>15 or that stock's going to go down.</p> <p>16 Q Okay.</p> <p>17 A So I mean, that, again, that's, you know,</p> <p>18 to give you the best assumption or the best explanation</p> <p>19 of, you know, you know, that value fluctuates daily.</p> <p>20 I can take the same car to the same</p> <p>21 auction five different weeks and it would bring, and it</p> <p>22 could bring five different figures with a wide variance.</p> <p>23 Q Okay. Well then, what you said is at the</p> <p>24 end of the month, you and Mr. Neal will -- and I'll ask</p>
<p>87</p> <p>1 you made a profit of three. So how can you go back and</p> <p>2 correct, track that if there's no appraisal record?</p> <p>3 A You can't really track it. But just to</p> <p>4 kind of -- I'll give you an answer to your question. How</p> <p>5 do I hold account, how's the, what's the accountability</p> <p>6 of that, I guess, is the basics of your question.</p> <p>7 Am I understanding? Where's the</p> <p>8 accountability of the raising the appraisal? How do you</p> <p>9 know how you did? Am I understanding what your question</p> <p>10 is?</p> <p>11 Q Yeah. I mean, and I recognize and I'll</p> <p>12 say before you, before you say that that, that you know,</p> <p>13 I understand you carried it around in your head --</p> <p>14 A Right.</p> <p>15 Q -- during the course of that deal, but</p> <p>16 you do a lot of deals. And if it came to the time that</p> <p>17 you have to go back and say "Huh?"</p> <p>18 A The accountability of that is there's two</p> <p>19 people in the dealership that are paid based on how that</p> <p>20 car does; okay? And that is Mr. Neal and myself. So the</p> <p>21 accountability is there.</p> <p>22 We know at the end of every month, you</p> <p>23 know, whether we, you know, how we've done at rating</p> <p>24 these cars. There's times where we will look and we'll</p>	<p>89</p> <p>1 you that. Do you do that when you see what -- do you get</p> <p>2 paid once a month?</p> <p>3 A We get paid once a month, yes.</p> <p>4 Q Okay. And when you do that, I assume</p> <p>5 that that is either for the proceeding 15th to the 15th</p> <p>6 or the preceding month because it'd be awful hard to cut</p> <p>7 you a check on the first or the 31st for all the</p> <p>8 performance up to there, or how does it work?</p> <p>9 A Calendar month. And then we pay</p> <p>10 generally on the 8th, 9th -- 7th, 8th, and 9th or 10th --</p> <p>11 Q Okay. Okay.</p> <p>12 A -- for the previous calendar month.</p> <p>13 Q And then, I take it that you and Mr.</p> <p>14 Neal, because of your responsibilities as sales managers</p> <p>15 and the way you're paid, you guys are both paid on</p> <p>16 percentage of gross sales; right?</p> <p>17 A Correct.</p> <p>18 Q And that's for the vehicles, for the back</p> <p>19 end products, everything?</p> <p>20 A Correct.</p> <p>21 MR. BROWN: I think you said gross</p> <p>22 sales. It might be gross profit.</p> <p>23 BY MR. BANDS:</p> <p>24 Q Gross profit.</p>

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<p>90</p> <p>1 A Gross profit, correct.</p> <p>2 Q Thank you. So the two of you will, in</p> <p>3 effect, have a sales manager meeting and that's one way</p> <p>4 that you gauge the performance of the sales department</p> <p>5 and the F&amp;I department is how much you make?</p> <p>6 A Yeah.</p> <p>7 Q Okay.</p> <p>8 A We'll put it up on a, you know, on a</p> <p>9 daily basis to see how we're doing on, you know, on used</p> <p>10 cars. To see, you know -- well, we'll look at wholesale</p> <p>11 to see how we're doing on wholesale units. We'll monitor</p> <p>12 the age of the units. A lot of, you know, a lot of</p> <p>13 facets of the business.</p> <p>14 Q Okay.</p> <p>15 A You know, I could talk for a long time</p> <p>16 on, you know, everything that's involved.</p> <p>17 Q Yeah. Well, and to go back to your</p> <p>18 example, if you have a down month and you say, "Boy, I</p> <p>19 wish I hadn't given the extra thousand on that deal," or</p> <p>20 "I wish I hadn't valued the vehicle at that."</p> <p>21 Back to my original question, if there's</p> <p>22 no written record and it's a month later, how do you know</p> <p>23 that you gave them the additional thousand on that if</p> <p>24 there's no record of what your initial appraisal was? Or</p>	<p>92</p> <p>1 Q Okay.</p> <p>2 A I mean, it's, you know, I don't care what</p> <p>3 kind of business you're in. You're going to have some</p> <p>4 sort of, you know, it's not going to be, we're not going</p> <p>5 to wake up all of the sudden on -- after the first of the</p> <p>6 month and look and wonder how we did this month. I mean,</p> <p>7 you know, I could -- we can tell you pretty close to, you</p> <p>8 know, to where we're at.</p> <p>9 Q Okay.</p> <p>10 A Then the reports are there. I mean, and</p> <p>11 it's something we do, you know, we work together and we</p> <p>12 discuss it on a daily and it's not formal. It's just in</p> <p>13 a, you know.</p> <p>14 Q Okay. Well, with your one dollar over</p> <p>15 invoice pricing structure, that's one dollar over the</p> <p>16 invoice price that you get, you paid for it. But then</p> <p>17 there's also the three percent hold back?</p> <p>18 A Correct.</p> <p>19 Q Okay. So that's essentially the profit</p> <p>20 on the sale of the vehicle? Not the back end items.</p> <p>21 Just the sale of the vehicle?</p> <p>22 A Correct.</p> <p>23 Q Okay.</p> <p>24 MR. BROWN: Well, there's</p>
<p>91</p> <p>1 do you remember?</p> <p>2 A You remember some. You don't remember</p> <p>3 them all.</p> <p>4 Q Okay.</p> <p>5 A I mean, you know, but you have a general</p> <p>6 idea of what the market is and you know, you can pretty</p> <p>7 well tell on -- I mean, it's just a, it's a car guy</p> <p>8 thing. It's a car mentality.</p> <p>9 You know what the value of the car is.</p> <p>10 What cars you stretch on. If you stretch on a car,</p> <p>11 you've got that car out there, you know you stretched in,</p> <p>12 on that car.</p> <p>13 When you sell it, you know, you know,</p> <p>14 that if you got -- were able to get a little more to get</p> <p>15 out of it or if you took a little bit of a loss on it,</p> <p>16 you know -- you know you stretched on it. It's just a,</p> <p>17 you know, it's a thing. Like I say, I compare it a lot</p> <p>18 to the stock market for lack of a better comparison.</p> <p>19 Q Okay. Those meetings between you and Mr.</p> <p>20 Neal, I mean, are they like a formal scheduled meeting</p> <p>21 that once a month you guys are going to sit down and go</p> <p>22 over the figures? Or is it just, you know, "Hey Gene.</p> <p>23 How'd you do this month? I did this," and --</p> <p>24 A We both pull the report every day.</p>	<p>93</p> <p>1 financing, too, on that, Bill.</p> <p>2 MR. BANDS: Well, I was going to</p> <p>3 get to --</p> <p>4 MR. BROWN: Okay. Okay.</p> <p>5 BY MR. BANDS:</p> <p>6 Q And, and, and so, and then I also take it</p> <p>7 that as far as what goes in the gross profits from which</p> <p>8 you and Mr. Neal are paid are the sale of the back end</p> <p>9 items?</p> <p>10 A Correct.</p> <p>11 Q Income from financing both the vehicle</p> <p>12 and the back end items?</p> <p>13 A Correct.</p> <p>14 Q Used car sales?</p> <p>15 A Correct.</p> <p>16 Q And similar back end items. The</p> <p>17 financing, benefits from the used cars?</p> <p>18 A Correct.</p> <p>19 Q The sales. I assume because you have a</p> <p>20 percentage of the dealership, you're also paid based on</p> <p>21 service?</p> <p>22 A No, sir.</p> <p>23 Q You don't get anything out of service?</p> <p>24 A No, sir.</p>

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1 Q Okay. Does -- Mr. Neal doesn't, either?

2 A No, sir.

3 Q Okay. Well, did that pretty much

4 encompass the, the income generating activities of the,

5 the dealership that goes into your bottom line

6 personally?

7 A Paid on the gross profit of the new car

8 and the used car departments.

9 Q Okay. Okay. That tells me how you

10 obviously assess. You and Mr. Neal assess essentially,

11 at least in part, your job performance and how the

12 department's doing. How do you assess the performance of

13 the individuals that work for you in sales and F&I?

14 A Well, that's -- I mean, it's see, I can

15 pull a report up every month and see, you know, can

16 basically look at their payday and see what they made to

17 see, you know, how they're doing.

18 And I can pull up a report on each, you

19 know, on each person. On each deal. I can break it down

20 any way I want to break it down and analyze just about

21 anything I want to analyze.

22 Q Okay.

23 A So, I mean, all the information is there.

24 Q You check that?

95

1 A Yeah. Sure.

2 Q Stay on top of it?

3 A Sure. I mean, you know, I mean, you

4 know.

5 Q Yeah. I mean, it's running a business.

6 A I don't care if you're running a

7 McDonald's, you know who's doing good and who's not.

8 Q Okay. Do you do regular performance

9 reviews of the F&I people?

10 A I wouldn't call it formal reviews, but we

11 have, you know, regular discussions and formal

12 discussions as though Mr. Neal and I have. We have

13 informal discussions with, you know, with finance.

14 Q Okay. And how is finance paid?

15 A Finance --

16 Q Do the F&I guys, they make a, do they

17 make a salary at all or is it straight commission?

18 A Straight commission.

19 Q Okay. And it's a commission obviously on

20 the financing and the back end percentage, the back end

21 commissions on those products. Are they paid based on a

22 percentage of the gross sales from the motor vehicles?

23 A No, sir. They're paid on the gross

24 profit of the finance department.

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1 Q Just the F&I department?

2 A Yes. Just the F&I department.

3 Q Okay. Salespeople. They're paid based

4 on a percentage of the gross sales of the vehicles;

5 right?

6 A Let me just -- rather than you try to dig

7 into it --

8 Q Yeah.

9 A -- let me just --

10 Q Lay out here.

11 A Let make it a lot easier for you.

12 Q Make it easier.

13 A Let me just give it you. On the new car

14 department, the salesperson is paid a percentage of the

15 entire gross profit of the deal.

16 Q Okay.

17 A Meaning the proceeds from the sale of the

18 car and the proceeds from the sale of the financed

19 income. That percentage is 11, 12 or 13 percent

20 depending on how many vehicles they sell. That is on the

21 new car department, with a minimum deal of \$150.00 and

22 sometimes there will be SPIFs on older units or left over

23 units. We may, you know, or something that we have

24 plenty of, we may say we may give you a guarantee of 200

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1 or 250.

2 Q And that was a spiff? Just that, and I

3 don't mean to interrupt, but a spiff is either a lump sum

4 based on each unit sold or a bonus based on if you sell

5 five of our --

6 A It could be structured --

7 Q -- year end models?

8 A -- several different ways, right.

9 Several different ways. On the used cars, they are paid

10 25 percent on the proceeds of the vehicle sale only.

11 Q Okay. Okay. So on the used car sales,

12 then, they don't get anything from financing --

13 A No.

14 Q -- or back end option --

15 A No. No.

16 Q -- or purchased? Okay. If you want to

17 assess the performance of one of your F&I people, what

18 are the factors that you look at to determine whether or

19 not they've had a good month?

20 A You basically look at the total amount of

21 income that they've produced, and you can look at it from

22 a lot of different angles.

23 You can look at it from a per retail

24 unit. You, you can look at penetration. There's a lot

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<p>98</p> <p>1 of different things. The basic thing I look at is the 2 total, the total income that they've produced in their 3 department. 4 Q Okay. 5 A Because there's a lot of factors. 6 Q Yeah. 7 A You know, you'll have company deals 8 where, you know, the companies are paying cash. You 9 know, if you get a lot of people that are paying cash, 10 you're not going to produce as much back side profit as 11 if you have a bunch of people that are, you know, that 12 are financing. So there's a lot of variables. 13 You just kind of look at it and you just 14 kind of get a feel for it. After 20 some years, you get 15 a feel for how they're, you know, for how they're doing. 16 You don't have to do a lot of, a lot of research. 17 Q Well, in the F&amp;I department, you'll agree 18 with me that obviously, a key component of the money 19 generating activity of that is the sale of the optional 20 services and products? 21 A Oh, absolutely. 22 Q Okay. 23 A That's the whole purpose of the finance 24 department is to sell as many of those products as they</p>	<p>100</p> <p>1 to give you a bonus."? 2 A I can't really recall any time we've done 3 that. We will, you know, they're, they've got pretty 4 good aggressive pay plan and I don't think there's been 5 any time where we've actually bonused them for extra 6 production. 7 Q Any incentive plan whatsoever over and 8 above the pay structure that where they get a percentage 9 of the profit from their department? 10 A There's probably been a few, but very 11 few. They vary. They don't -- I mean, all the spiff 12 type things we do is get more sales oriented. Because 13 we've got good pay plans for sales managers and finance 14 managers and those pretty much stand on their own. 15 Q Okay. 16 A We don't need much prodding with extra 17 SPIFs to do our job. That is more as a tool to get your 18 front line people to go out and work a little harder for 19 you. 20 Q So essentially you see, just check and 21 see what that department's made. And you know the people 22 who worked there? 23 A Sure. 24 Q And what if one's selling 75 percent and</p>
<p>99</p> <p>1 can sell. 2 Q Okay. And do you monitor the penetration 3 of each, each product? Excuse me. Overall and for each 4 individual F&amp;I person? 5 A I don't monitor. I don't keep a specific 6 list of it. I don't always pull it up. If I have a -- 7 sometimes I'll go back and try to pinpoint what the 8 penetration is if I think I'm having a little problem 9 with a product, but I don't keep a, you know, a specific 10 record. 11 It's all there. I look at it. I pull a 12 report that has everything on it that doesn't give me 13 penetration levels, and I just kind of glance at it to 14 see, and I can tell by glancing at it. 15 Q Okay. And the F&amp;I guys are paid a 16 percentage of the gross profit for their department. Say 17 one particular F&amp;I person has just made a killing over 18 the course of a year or a month; and they're still paid a 19 percentage, but you and Gene are paid directly based on 20 those percentages, and Mr. Thornhill is getting a part of 21 those percentages. 22 Is there ever a time where you look at 23 them and say "Even though you're being paid a percentage 24 of what you sell, you had such a good month, we're going</p>	<p>101</p> <p>1 the other is selling 25 percent? Do you get on the 25 2 percent guy to get his sales up? 3 A You work on them to try to pick them up, 4 yeah. I mean, you just kind of, you talk to him and find 5 out why. Sometimes, you know, he's had a bad month. 6 Sometimes, you know, maybe he's had a new baby at home 7 and his mind's not on the job. Maybe he's got divorced 8 and he's, you know, going through a divorce. 9 A lot of different things can, can 10 happen, I mean, in any kind of work you do. Sometimes 11 you're on. Sometimes you're off. But if you look at the 12 whole thing and how the whole thing's going. 13 Q Have you ever had to let anybody go 14 because they essentially weren't producing enough in the 15 F&amp;I department? 16 A I don't know that I've let anybody go. I 17 think they've -- most of them have probably left before 18 they knew they were going to get let go. 19 Q Okay. We mentioned that Mac Painter's no 20 longer there? 21 A Yeah. 22 Q And when did he, when did he leave? 23 A Last -- I'm not sure of the date. It was 24 last Friday, I believe.</p>

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1 Q Okay. Why did he leave? Was he let go  
2 or did he leave of his own volition?  
3 A No. He left on his own. He took,  
4 assumed another position at another dealership.  
5 Q Okay. And what was the other gentlemen  
6 that had left out of the five that we went through?  
7 A Mr. Stowers.  
8 Q Hank Stowers?  
9 A Yeah.  
10 Q Okay. And when did he leave?  
11 A He left probably two and half, two months  
12 ago.  
13 Q Okay.  
14 A And he assumed another position at  
15 another dealership.  
16 Q Okay. They assumed positions in  
17 dealerships locally down there?  
18 A Yeah.  
19 Q Competitors?  
20 A Yeah.  
21 Q Okay. Hank Stowers at the time, was he  
22 the -- he was the sales manager or the F&I person or both  
23 at the used car lot; right?  
24 A The Danville location, correct.

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1 Q And that Danville location in Boone  
2 County, that's under the corporate --  
3 A Correct.  
4 Q -- structure of Thornhill; right?  
5 A Correct. Correct.  
6 Q Just to talk a little bit about the Full  
7 Circle Program. You've kind of given me the anatomy of a  
8 deal. The process from when somebody comes on the lot to  
9 when they, when they, when they close.  
10 Just backing up real quick to when they  
11 close and before it's closed out on the computer. Once  
12 they sign the documents, and you say that there's a bunch  
13 of them, anywhere from 35 to 40, what documents do they  
14 get copies of?  
15 A I'd need to get a copy of the -- probably  
16 go through a whole thing to exactly, to see exactly what  
17 it would be. They get copies of the contracts.  
18 I mean, it would take me a while. -- I  
19 mean, if you want me to structure a deal, if I could have  
20 been prepared, I could have brought a deal packet and  
21 done that for you.  
22 But they get copies of the trans --  
23 depends on whether they put a temporary tag or transfer a  
24 license. They get a copy of the bill of sale. They get

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1 a copy of the contract. A copy of the We Owe. They get  
2 copies of any, you know, any of the products that they,  
3 you know, that they buy as far as the life and disability  
4 policies, extended service contracts, gap, you know.  
5 Whether it be etch, whether it, you know, Full Circle  
6 Benefit, the We Owes.  
7 Q Is there a We Owe in every deal?  
8 A Yes, sir.  
9 Q So --  
10 A Let me say this. There's supposed to be  
11 a We Owe in every deal. That if, you know, there might  
12 be one that might slide through, but there's supposed to  
13 be a We Owe in every deal.  
14 Q And if there's a We Owe and it's  
15 essentially marked N/A across the board, is that simply  
16 because you want to make sure that there's something in  
17 the file that memorializes the fact that there's nothing  
18 else to be done on the deal? You have a We Owe and you  
19 say "Essentially, we don't owe you anything"?  
20 A Yeah. I want to make sure. What I want  
21 to do is make sure that I've got all the agreements.  
22 That there's no unspoken agreements between the customer  
23 and the salesperson that says "You know, well, I'm going  
24 to, you know, I'll get you a set of floor mats for this

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1 car."  
2 Q Okay.  
3 A Or, you know, "I'll change your tape  
4 player out to a CD player." That way, if there's  
5 anything that's, you know, that should be left nothing  
6 unspoken. Anything, you know, a customer shouldn't take  
7 anything unspoken, and the salesperson shouldn't do  
8 anything that, you know, to consummate and make sure any  
9 agreements that, you know, that are made, are there and  
10 in writing.  
11 Q Okay. So in essence, a We Owe is more  
12 for purposes of documenting the fact that the deal's  
13 closed and nothing's owed. It's more common when it's  
14 done like that than it is for actually "We do owe you a  
15 set of floor mats"?  
16 A I wouldn't know with -- probably more  
17 common, but it'll say "We Owe a bed liner." "We owe a  
18 set of floor mats." "We owe a tank of gas and a wash  
19 job," you know.  
20 Q Okay.  
21 A "We owe," you know, whatever we may owe.  
22 I mean there's, you know, a lot of things that are  
23 documented. We owe nothing but good service.  
24 Q Okay. And so copies of obviously the

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<p>106</p> <p>1 purchase agreement?</p> <p>2 A Uh-huh.</p> <p>3 Q The financing agreement?</p> <p>4 A Uh-huh.</p> <p>5 Q For Full Circle, a copy of the Spectrum</p> <p>6 registration form?</p> <p>7 A Right.</p> <p>8 Q Copies of applications which also have</p> <p>9 certain policy terms usually for the life and health and</p> <p>10 disability insurance; right?</p> <p>11 A Right.</p> <p>12 Q Sometimes copies of -- well, sometimes</p> <p>13 the extended warranties, extended service contracts</p> <p>14 incorporate applications and terms together so they'll</p> <p>15 get a copy of that.</p> <p>16 A I don't know what, because I don't, like</p> <p>17 incorporated?</p> <p>18 Q Well, on the face of an extended</p> <p>19 warranty, there may be not just an application for it and</p> <p>20 signing it and saying we want it, but it also has the</p> <p>21 terms, you know, the duration and --</p> <p>22 A Right.</p> <p>23 Q -- you know, because usually you get</p> <p>24 something with it or have to read the back if there are</p>	<p>108</p> <p>1 A I don't know.</p> <p>2 Q Did you have any input into the decision</p> <p>3 to have an acceptance form as opposed to a waiver form?</p> <p>4 A Those were set up -- I mean, that's the</p> <p>5 way it was set up. We were told we had to do waivers on</p> <p>6 insurance products like, you know, life insurance,</p> <p>7 disability insurance. I know, I guess rebateable</p> <p>8 products. Products that are rebateable, is the way I</p> <p>9 understand it.</p> <p>10 But that's the way it was set up in our</p> <p>11 finance training. And it was never mentioned to have a,</p> <p>12 you know, a waiver form signed on the -- on the Full</p> <p>13 Circle Benefit .</p> <p>14 Q Okay. Well, though, when you talk about</p> <p>15 rebateable, you're meaning that if, if a consumer -- if</p> <p>16 it's a service contract and it's non-transferrable and</p> <p>17 they pass away or if they default or if some occurrence</p> <p>18 takes place where that premium is not completely used for</p> <p>19 the duration of the term, then there's a refund that's</p> <p>20 ultimately going to be given to the lender; right?</p> <p>21 A It depends. It could be given to the</p> <p>22 lender if the vehicle's paid off, traded in and paid off.</p> <p>23 If that lender's paid off, it could be to the --</p> <p>24 Q To the customer?</p>
<p>107</p> <p>1 exclusions, but -- but they get a copy of that; right?</p> <p>2 A Yeah. I just got to watch myself and</p> <p>3 stay alert and try to listen to you.</p> <p>4 Q I'm not trying to trip you up. Now, if</p> <p>5 some -- there are also waivers that you have them sign?</p> <p>6 A Correct.</p> <p>7 Q If I don't want life and health or credit</p> <p>8 disability, credit life, I sign a waiver that says I was</p> <p>9 offered that and I don't want it?</p> <p>10 A Right.</p> <p>11 Q Okay. And same for -- do you have them</p> <p>12 for extended service contracts?</p> <p>13 A Uh-huh.</p> <p>14 Q Have them for gap?</p> <p>15 A Uh-huh.</p> <p>16 Q Have them for the theft assistance</p> <p>17 program?</p> <p>18 A I don't think they have one for the theft</p> <p>19 assistance.</p> <p>20 Q Okay. And you don't have a waiver form</p> <p>21 for the Full Circle Program?</p> <p>22 A I don't think so.</p> <p>23 Q Okay. Why isn't there a waiver for the</p> <p>24 Full Circle Program?</p>	<p>109</p> <p>1 A To the customer, yes.</p> <p>2 Q Okay. And so, for basically the</p> <p>3 insurance coverages and the extended warranties, because</p> <p>4 they have specific durations and terms, in the event of</p> <p>5 some sort of breach of the agreement or event that stops</p> <p>6 the consumer from paying off the obligation, there's a</p> <p>7 refund of the unused portion to either the consumer or</p> <p>8 the lender?</p> <p>9 A Correct.</p> <p>10 Q And that's obviously not the case with</p> <p>11 the Full Circle Benefit Program?</p> <p>12 A Correct.</p> <p>13 Q That's called a soft ad; right? Is that</p> <p>14 the term?</p> <p>15 A That's your term. I'd, I would, I would</p> <p>16 agree with that term, a soft ad.</p> <p>17 Q Okay. And the theft assistance program</p> <p>18 would probably be a soft ad, too?</p> <p>19 A We'd consider that a soft ad as well.</p> <p>20 Q It's essentially, it's a one time payment</p> <p>21 for a product or a benefit. Not something where you have</p> <p>22 a contractual obligation over a --</p> <p>23 A Correct.</p> <p>24 Q -- certain period of time?</p>

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<p>110</p> <p>1 A Correct.</p> <p>2 Q Okay. Do any of your lenders refuse to</p> <p>3 finance soft ads?</p> <p>4 A No.</p> <p>5 Q Okay. For instance, does Huntington</p> <p>6 Banks tell you "Because we're" -- "if this person</p> <p>7 defaults, we're not going to get our money or our unused</p> <p>8 portion back on the Full Circle Program"? You know, "We</p> <p>9 won't finance it"?</p> <p>10 A I haven't had any problems like that</p> <p>11 whatsoever.</p> <p>12 Q Okay. What about GMAC?</p> <p>13 A I haven't had no problem whatsoever.</p> <p>14 Q When you're doing the -- closing the deal</p> <p>15 with all the documents in the end of the F&amp;I process, is</p> <p>16 there a standard order of presentation of the documents?</p> <p>17 A That depends on the finance manager. We</p> <p>18 have, you know, one, I think, will take it and do it in</p> <p>19 the same order every time.</p> <p>20 But there is no standard required order</p> <p>21 that they're, you know, that they're done in. So I</p> <p>22 would, I wouldn't sit here and tell you that there is a</p> <p>23 definite order, you know. Each individual person will</p> <p>24 kind of develop their own, you know, ways to do things.</p>	<p>112</p> <p>1 you were rephrasing something.</p> <p>2 Q Well, I was kind of getting there.</p> <p>3 A I don't answer if it's not a question.</p> <p>4 Q It's late in the day. It's late in the</p> <p>5 day for me, too. Is there any particular order before</p> <p>6 the documents are created that somebody in your F&amp;I</p> <p>7 department starts presenting and talking about optional</p> <p>8 services or products?</p> <p>9 A There is no specific order. I mean,</p> <p>10 every, each one of them's going to do it, their thing.</p> <p>11 They're going to discuss all the options and make</p> <p>12 everything available to them. And they're, you know,</p> <p>13 they're going to work out with the customer what the, you</p> <p>14 know, what they want to do.</p> <p>15 Q Okay.</p> <p>16 A I mean, it's not cut and, you know, it's</p> <p>17 not cut and dry. I mean, it's, you know, it's</p> <p>18 negotiating. It's not a, you know, that it's going to be</p> <p>19 laid out in a, you know, in a certain order each, you</p> <p>20 know, they will do it differently. They're two different</p> <p>21 people.</p> <p>22 Q Okay.</p> <p>23 A It'd be kind of like asking not to be --</p> <p>24 but is every deposition the same questions asked in the</p>
<p>111</p> <p>1 Q Okay.</p> <p>2 A Their own order that they print it in.</p> <p>3 They will, you know, have their forms and, you know, in</p> <p>4 order that they desire to print them, and --</p> <p>5 Q Okay. So it's possible that the</p> <p>6 financing agreement and the sales contract may very well</p> <p>7 be the last documents presented for execution by the</p> <p>8 consumer?</p> <p>9 A Yes. It's possible.</p> <p>10 Q Conversely, they could be the first ones?</p> <p>11 A Could be the first.</p> <p>12 Q Okay. Do you see any importance</p> <p>13 whatsoever in presenting the documents in a certain</p> <p>14 order?</p> <p>15 A No, sir.</p> <p>16 Q You told me that as part of the F&amp;I</p> <p>17 process as what someone may say terms as someone else may</p> <p>18 say financing arrangements are concerned, that those are</p> <p>19 kind of dickered and talked about in conjunction with</p> <p>20 presentation of optional products. You'd --</p> <p>21 A Correct, yes.</p> <p>22 Q Okay. And I may, I word it a little</p> <p>23 differently than when we talked before.</p> <p>24 A I didn't know if that was a question or</p>	<p>113</p> <p>1 same order? I mean, I'm not -- don't take me off color</p> <p>2 there.</p> <p>3 Q Oh no, no offense taken at all. In the</p> <p>4 -- well, you mentioned negotiating at that, at that point</p> <p>5 of the deal. Many of the optional service and products</p> <p>6 are negotiable, aren't they?</p> <p>7 A Correct. They're all negotiable.</p> <p>8 Q And that's because extended service</p> <p>9 contract you're getting for X amount, a certain price,</p> <p>10 and you probably have some sort of a guideline or set a</p> <p>11 price.</p> <p>12 But if somebody decides they don't want</p> <p>13 to pay that for an extended service contract, they can</p> <p>14 negotiate you down on that, can't they?</p> <p>15 A Yes, sir.</p> <p>16 Q Okay. The same with the insurance</p> <p>17 premiums or life and health?</p> <p>18 A No, sir.</p> <p>19 Q Is that -- you can't negotiate that?</p> <p>20 A No.</p> <p>21 Q Okay. Full Circle?</p> <p>22 A No.</p> <p>23 Q That's a non-negotiable price?</p> <p>24 A Non-negotiable.</p>

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<p style="text-align: right;">114</p> <p>1 Q Okay. The anti-theft deterrence 2 products? 3 A I would assume at this point, it's non- 4 negotiable. We've never, I've never negotiated it, no. 5 Q How about gap? 6 A Gap is negotiable. 7 Q So when you're going over -- how about 8 you personally, when you're doing the F&amp;I on a deal? 9 What order do you like to go in, if you have one, when 10 you start talking about the optional services or 11 products? 12 A What I like to do when I go over it, is I 13 just, I explain all the products to them and I ask them 14 what, you know, I explain to them what each of the 15 products are and ask them which products that they would 16 like for me to calculate into their payments. 17 And then I ask them how, you know, how 18 many months they want to calculate their payment on. And 19 then I will, you know, give them the, you know, the term 20 and the rate and the payment with the products that 21 they've chosen. 22 Q Okay. Are there any products that you 23 place more emphasis on than others? 24 A To answer the question, there's probably</p>	<p style="text-align: right;">116</p> <p>1 Q Okay. 2 A You know, to keep people in our 3 dealership and our service department. That it provides 4 very good benefits for them and that is very beneficial 5 to them at, you know, such a small price. 6 Q Okay. As far as the Full Circle Benefits 7 Program is concerned, when you present that, tell me how 8 you do it. I mean, what's the logistics? What's the -- 9 your common SOP if you've got one. 10 MR. BROWN: Are you talking about 11 him personally or -- 12 MR. BANDS: Yeah, yeah. 13 MR. BROWN: Okay. Okay. 14 BY MR. BANDS: 15 Q Yeah, because ultimately, I mean, like 16 you've told me -- 17 A Sure. 18 Q -- different people do it different ways. 19 A Sure. Right. 20 Q And you're the first person I talked to 21 other than Gene Neal three months ago who actually is 22 involved in F&amp;I, so. 23 A Well, I presented it as, you know, what 24 we've got available is the Full Circle Benefit Program.</p>
<p style="text-align: right;">115</p> <p>1 times where you do place more emphasis on one product 2 than the other. I mean, it, it varies. 3 Q Okay. And that would probably be, and 4 correct me if I'm wrong, but it'd probably be some of the 5 -- the service contract and insurance products because 6 they're going to have a higher, higher cost? 7 A It depends on what the customer's needs 8 are. 9 Q Okay. 10 A You know. I mean, if you've got a 11 customer that's driving quite a bit of mileage and all 12 that, then you're going, you know, then you're going to 13 really, you know, you might put more emphasis on the, you 14 know, extended, on the extended service contract. 15 Q Okay. 16 A If you've got, you know, somebody with, 17 with a lot of kids, you know, may put more emphasis on 18 the, you know, the life and disability, you know, 19 benefits. I mean, you -- 20 Q Okay. Where in the mix would the Full 21 Circle Program come in, usually? 22 A The Full Circle Program is something I 23 always put a lot of emphasis on because I think it's, you 24 know, a very good program as far as customer retention.</p>	<p style="text-align: right;">117</p> <p>1 But I actually call it Spectrum Auto Pack, is what I 2 actually call it. 3 I have since become, started calling it 4 Full Circle Benefit Program more recently, since it's had 5 such a distasteful name here recently with all the 6 mailings. 7 But I present it as, you know, as a -- as 8 a service package where you're going to have coupons for 9 the service department that's going to give you discounts 10 on your oil changes, tire rotations, brake jobs, front 11 end alignments and that there is \$600.00 worth of coupons 12 that are going to, you know, that you can take use of in 13 the service department. 14 Also, you've got some tire hazard 15 warranties and some hotel clubs and roadside, you know, 16 assistance service. 17 And I also, you know, tell them that it's 18 a great way to, you know, to have your service done here 19 and all your records here and all kept on the computer. 20 And then I also explain to them that it's 21 a great program for us as well because Spectrum calls all 22 of our customers, whether you're in sales or service, and 23 will ask a survey to make sure that, you know, to make 24 sure that you were treated properly, and that we can, you</p>

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<p>118</p> <p>1 know, analyze those surveys to make sure that everybody's 2 being taken care of in the way that we would like for 3 them to be taken care of. 4 Q Okay. 5 A And, you know, tell them and explain to 6 them the cost of them is just \$141.50 plus tax, which is 7 \$149.99 and it's only going to make your monthly payment 8 go up, you know, whatever it is. Three bucks or so. 9 Q Now, do you have any idea -- and I take 10 it you've sat on other F&amp;I deals with other people? 11 A Yeah. Occasionally. 12 Q In fact, that's part of your 13 responsibility to make sure that they're doing their job 14 right is to occasionally monitor what they're doing in 15 closing a deal? 16 A Sure. 17 Q Have you imparted upon your F&amp;I people 18 the importance of walking through the entire Full Circle 19 Benefits Program like you just told me? 20 A Absolutely. 21 Q Okay. And do they do that on a regular 22 basis? 23 A Yep. Yeah. 24 Q And you know that for a fact?</p>	<p>120</p> <p>1 A Don't have a set procedure. But 2 occasionally I will talk to somebody, you know. I go out 3 and thank a lot of customers. I do the commercials. 4 People know who I am and, you know, a lot of times I will 5 go out and, you know, I say, "I'm Butch Nisbet. I just 6 want to thank you for the business. Want to make sure 7 you were treated okay. You're going to be getting a 8 survey in the mail from General Motors. Would, you know, 9 would like to think that you can check everything 10 completely satisfied." 11 And I'll just sit down and talk to them 12 and say, you know, "Was everything, you know, was 13 everything explained to you? Did," you know "Was all of 14 the, all of the, you know, everything explained to you in 15 the finance office? Was the extended warranty made 16 available? And the Spectrum Auto Pack made available? 17 And the gap?" 18 And, you know, "Yeah, he went over and 19 explained all of that to me." And, you know, "Well, did 20 you, did you, well, like to put that on there?" 21 You know, just kind of a general exit 22 interview. Not something I do all the time. But I do 23 that as a general, you know, that's my, one of my big 24 fortes is I'm the one that does the commercial and I'm</p>
<p>119</p> <p>1 A Yes, sir. 2 Q Do you watch each and every deal? 3 A No, sir. 4 Q Then how do you know that they're doing 5 it? 6 A Well, I'm, you know, I know on the deals 7 that they're, you know, that they're doing it. And I, 8 you know, from their conversations with them. And I know 9 from talking, you know, to customers that they're going 10 over it with them. 11 And, you know, I guess if you want to say 12 for a fact, no, if I'm not setting there watching them. 13 You know, probably need to clarify that. But I fully 14 trust my people and I, you know, I know through my 15 conversation with them, you know, what I understand and I 16 also check with the customers occasionally. Will 17 interview a customer to find out, you know, was 18 everything explained and all that. And I get nothing but 19 good, good reports. 20 Q When you say you interview a customer, 21 what, what, what -- tell me about that. Do you have some 22 sort of a procedure where, in addition to the Spectrum 23 call back, you guys will do quality control follow-up 24 calls?</p>	<p>121</p> <p>1 there and I'm available. And they see me in the showroom 2 and I shake their hand. 3 And, you know, and I kind of do that 4 little exit interview. I don't do it daily. Sometimes 5 I'll do several a week and sometimes I may go a couple 6 weeks and not do any. 7 Q Okay. Your computer system. Do you know 8 anything about how that's set up? 9 A Uh-huh. 10 Q Okay. What kind of programs does 11 Reynolds and Reynolds have in place in your computer 12 system for the creation of your purchase agreements? 13 A Set it up however we want it set up. I 14 mean, I don't understand what you're -- 15 Q Well, for instance, if someone sits down 16 at a keyboard to prepare a purchase agreement, and they 17 key in a stock number of a vehicle, what, what's the list 18 amount of that vehicle going to be on the computer? 19 A MSRP. 20 Q Okay. Is there any reason why it's MSRP 21 as opposed to inputting the invoice? But you do input 22 the invoice price; right? 23 A The invoice. Yes, the invoice. It's all 24 in there. Both the M, both the MSRP. The M, they're</p>

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<p>122</p> <p>1 both, all the figures are in there. They're in the 2 computer when you pull a deal up. 3 Q Okay. That's when you, you're pulling 4 something up. 5 A Yeah. 6 Q But what about when you're, when you're 7 using the keyboard, your cursor, everything, to actually 8 set up the computer to print a contract? 9 A Uh-huh. Whatever, whatever number we 10 enter in there is what will print on the contract. 11 Q Okay. Okay. So when you say "whatever 12 number we enter in there," if it brings up the MSRP, if 13 it brings up the invoice plus a dollar, if it brings up a 14 blank and lets you fill it in, I mean, how does it work? 15 If it's, if it's all in there. We've been told that 16 there are prompts that you actually use to -- 17 A Yeah. You can prompt it to say anything. 18 I mean, everything is prompted. I mean, it's just like 19 you go through a computer screen. I mean, anything it 20 asks you. 21 I mean, you just put in what you want to 22 put in. I mean, basically, you'll put in a price. You 23 put in term. You put in payments. You put in do you 24 want life insurance? Do you want disability? If you</p>	<p>124</p> <p>1 A No. There's a general screen with the 2 fields and that's what I was saying. We plug in the 3 fields, you know, the amount of the extended service 4 contract. The amount of the gap. Whether they want 5 life. Whether they want life or disability. 6 I mean, we put all the information in. I 7 mean, once you've negotiated this, whatever you, you 8 know, whatever the customer's agreed to, that's what in, 9 I mean, that's what in there. 10 Q And that's on the sales document, the 11 sales agreement, the purchase agreement? 12 A Yeah. 13 Q Okay. I guess what I'm back to, though, 14 is when you have the actual cash price in the upper right 15 hand corner and when you call up that screen to create 16 that final document, are you inputting a stock number? 17 A No. You've already input the, you put, 18 input the stock number. Yeah, you input the stock number 19 when you start the deal. 20 Q Okay. But that's back when you start the 21 deal. I'm talking about when you're, you're, you're at 22 -- when you're right at that point where the, someone at 23 F&amp;I's creating that document to print it off to be signed 24 at the end of the F&amp;I process.</p>
<p>123</p> <p>1 want a gap, you put a gap figure in. If you want a 2 warranty, you put a warranty figure in. 3 You, you know, you got to determine what 4 your interest rate is. You've got, you know, the screen 5 is all there. You've got four or five screens and you 6 have, you know, and you've got a deal screen, and you put 7 all that information in to determine the payment. 8 I mean, you've got to, you know, to plug 9 the, you know, whenever you agree on that, whatever 10 you've agreed upon is what you'll put in there. 11 Q Okay. And what you're telling me is when 12 you're actually putting the numbers in on a deal screen 13 to try and determine -- when you're running the numbers? 14 A Right. 15 Q Is that -- okay. Well, I'm talking about 16 numbers have been run. People have been told about 17 optional products. They've agreed to terms or financing 18 conditions or, you know, the financing arrangements. 19 When it comes time to print that, that 20 purchase agreement, that's what I'm talking about. I 21 mean, when it comes time to -- is there a special screen 22 that brings up, in effect, an exemplar of a purchase 23 agreement and you can point and click or fill things out? 24 Or does it give you fields or how's it work?</p>	<p>125</p> <p>1 A It's, I mean, I don't understand where 2 you're -- I mean, all the information, whatever you've 3 agreed to is what's on there. I mean, I don't know where 4 you're -- what. 5 I don't understand the answer that you're 6 wanting. But everything that's been agreed to, whether 7 warranties, price, if they, you know, I don't know if you 8 want to get back to the negative equity thing, but if 9 they've adjusted it. 10 I mean, whatever they've adjusted it to. 11 Whatever they put in there is what's going to print on 12 that form. 13 MR. BROWN: I normally don't do 14 this, but since it's late in the day, I think there's 15 fields they fill in. Fields with information. And then 16 I think they can just select the type of document to be 17 printed. Put that form in. 18 THE WITNESS: Yeah. 19 MR. BROWN: The computer 20 automatically does it for them. 21 MR. BANDS: And believe it or not, 22 I actually, I was going to get to that. That was my next 23 topic. 24 MR. BROWN: Okay. I'm sorry. I'm</p>

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<p style="text-align: right;">126</p> <p>1 sorry.</p> <p>2 BY MR. BANDS:</p> <p>3 Q No, no, no. I appreciate your short cut</p> <p>4 because I was there, going to say, well, you know, is it</p> <p>5 -- do you just chose a document after you put your</p> <p>6 information in?</p> <p>7 A Yeah. We've got a, we've got a screen.</p> <p>8 You've got a, you know, a screen that's got all the</p> <p>9 fields in it. Then you've got a customer information</p> <p>10 screen which has their name and address. Whether it's</p> <p>11 going to be in both names, telephone numbers and all of</p> <p>12 that.</p> <p>13 Then you've got a vehicle screen that</p> <p>14 will have the, you know, the vehicle identification</p> <p>15 number and the miles, the color and the trim. And then</p> <p>16 you have a screen that has the trade-in information.</p> <p>17 Then you have a screen that has the insurance</p> <p>18 information. Then you just select your documents and it</p> <p>19 pulls --</p> <p>20 Q Okay.</p> <p>21 A -- from what, you know.</p> <p>22 Q So if I select a document for the</p> <p>23 purchase agreement, and I just hit a button. That</p> <p>24 automatically then comes up and gives me effectively a</p>	<p style="text-align: right;">128</p> <p>1 put it on?</p> <p>2 A When we pull the program up?</p> <p>3 Q Yes.</p> <p>4 A You're talking about? It's on there.</p> <p>5 All the products are on there.</p> <p>6 Q Okay.</p> <p>7 A And then we take them off or add them on</p> <p>8 based on as we want to.</p> <p>9 Q Okay. But initially, at the initial</p> <p>10 stage, all of the products are there?</p> <p>11 A But that -- well, we have -- that's,</p> <p>12 they're there, but we haven't discussed them with the</p> <p>13 customer. They're not there for the customer. They're</p> <p>14 there for our --</p> <p>15 Q Yeah.</p> <p>16 A -- for our benefit.</p> <p>17 Q Yeah.</p> <p>18 A I mean to, to explain the situation,</p> <p>19 they're there, we ask, you know, "Do you want this?"</p> <p>20 Then we either, you know, yes, it's in or yes, it's out.</p> <p>21 Then we ask that, yes, it's in or yes, it's out. But,</p> <p>22 you know, when we pull them in, all the products are in</p> <p>23 there.</p> <p>24 Q Yeah.</p>
<p style="text-align: right;">127</p> <p>1 completed purchase agreement based on the information</p> <p>2 that's already been put in?</p> <p>3 A Yeah. Based on what we've negotiated and</p> <p>4 put in there, you know.</p> <p>5 Q Okay.</p> <p>6 A In other words, when we calculate our</p> <p>7 payment, I mean, you know, let's say that, that you're</p> <p>8 the customer and, you know, and you tell me, "I want to</p> <p>9 go 60 months and I want the life and disability at eight</p> <p>10 and a half percent and the payments 375 a month."</p> <p>11 You know, and that's what I've got in</p> <p>12 there, that's what it's going to be. You know, based off</p> <p>13 of those, you know, those figures.</p> <p>14 Q Okay. Now on your system when you're</p> <p>15 actually putting in the information before you reach the</p> <p>16 point where you point and click or hit a document that</p> <p>17 you want to complete.</p> <p>18 You have prompts that ask you if you want</p> <p>19 this or that or input this information or that</p> <p>20 information. Is, are the -- I'll just, for the Full</p> <p>21 Circle Benefits entry, how's that prompt read?</p> <p>22 Is it a Y/N prompt or is it a prompt that</p> <p>23 has Full Circle already on there and you have to ask</p> <p>24 somebody to take it off, or is it a blank and you have to</p>	<p style="text-align: right;">129</p> <p>1 A But I also have 60 months in there. I</p> <p>2 also have today's date even though they may buy it</p> <p>3 tomorrow. I also have today's date in there. I also</p> <p>4 have to put a term. I also have 45 days to the, you</p> <p>5 know, to the first payment. They may want 30 or 60. I</p> <p>6 mean, there's anything to speed up the process. I, you</p> <p>7 know, I put in there.</p> <p>8 Q But the bottom line is for some of these,</p> <p>9 either be it for monthly payments or for optional</p> <p>10 products or whatever, there's a preset format, if you</p> <p>11 will, in there that lists all those things and that you</p> <p>12 have to take them out, not put them in?</p> <p>13 A Sure. Yeah.</p> <p>14 Q Okay.</p> <p>15 A But just to give you an example, to</p> <p>16 expand, I mean, someone may -- when you're discussing</p> <p>17 extended warranty, you can't, you know, you have four,</p> <p>18 five, six, seven year warranties from 60, 75 to 100,000</p> <p>19 miles. I mean, you know, you have to put that on</p> <p>20 whatever, you know, whatever you want.</p> <p>21 Q Okay.</p> <p>22 A Some people just like life insurance.</p> <p>23 There's single life, joint life, life and disability. I</p> <p>24 mean, you know, you have to put it on what they, you</p>

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Mary J. Gagnon, CCR



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Thornhill Pontiac-Buick-GMC, Inc., vs. Spectrum Services, Inc.

<p>134</p> <p>1 Q And that's you and Wally together, or --</p> <p>2 A No. That was Randall and, I mean, it was</p> <p>3 set -- Randall and Wally. It was set. And Spectrum.</p> <p>4 I was, I don't -- it was, it's been at</p> <p>5 \$141.50 just about the whole time I've been there.</p> <p>6 Q Okay. Wally, was Wally already there</p> <p>7 when you went?</p> <p>8 A We went together.</p> <p>9 Q Okay.</p> <p>10 A Wally went as 50 percent owner --</p> <p>11 Q Okay.</p> <p>12 A -- and I went, I went as sales manager.</p> <p>13 Q Okay. Did you guys arrange it that way?</p> <p>14 Was it kind of like a package deal from the get go or was</p> <p>15 that just coincidental?</p> <p>16 A Well, it was kind of, I mean, the way it</p> <p>17 was, I didn't even know Wally had, I mean, I had no idea</p> <p>18 Wally was, Wally had worked a deal or Wally was buying</p> <p>19 half of it.</p> <p>20 He called me and he said he wanted to</p> <p>21 talk to me, and he told me he was buying half of it and</p> <p>22 wanted me to come and be the sales manager. And he said,</p> <p>23 you know, hopefully, if everything worked right, one day</p> <p>24 he'd, you know, he'd like to make me partner. And so</p>	<p>136</p> <p>1 that to give it to you exactly. But I've been paid on</p> <p>2 Spectrum since I've been there.</p> <p>3 Q Okay. Yeah, I'd assume so.</p> <p>4 A I can't remember then. Yeah. I can't</p> <p>5 remember if it was \$10.00 or \$20.00. I'm thinking it</p> <p>6 was, it was, I think it was \$20.00 that I was getting</p> <p>7 then.</p> <p>8 Q Okay. Did that change or go up when the</p> <p>9 price moved from 120 something to \$149.99, inclusive of</p> <p>10 tax?</p> <p>11 A I think the price went up at \$141.50 when</p> <p>12 we came on board, I think is when it went up. I think it</p> <p>13 was already, you know, that they set, I think the whole</p> <p>14 time I've been there that the price has been \$141.50. I</p> <p>15 think when I started, that they, that's when they</p> <p>16 restructured it to one, you know, to \$141.50.</p> <p>17 Q Okay. So but right before you went</p> <p>18 there, it was 120?</p> <p>19 A It was 120 something, yeah.</p> <p>20 Q In that --</p> <p>21 A And they were --</p> <p>22 Q In that time frame.</p> <p>23 A Yeah.</p> <p>24 Q Because earlier you told me it may have</p>
<p>135</p> <p>1 happened it worked out.</p> <p>2 Q Had you all worked together before?</p> <p>3 A No. Not -- had never worked for Wally.</p> <p>4 We were just, we grew up together.</p> <p>5 Q Okay.</p> <p>6 A Knew each other.</p> <p>7 Q Okay. And he knew that you had the sales</p> <p>8 experience?</p> <p>9 A Yeah. He had the service experience and</p> <p>10 I had the sales experience.</p> <p>11 Q Okay. So, after you went to work there</p> <p>12 then, it changed from approximately 120 something you say</p> <p>13 to the \$141.50 plus sales tax?</p> <p>14 A Yes.</p> <p>15 Q And at that time, Wally had 50 percent of</p> <p>16 the dealership?</p> <p>17 A Yeah.</p> <p>18 Q Okay. When you went to work there as</p> <p>19 sales manager and Wally went to work there as 50 percent</p> <p>20 owner, how was the -- how was the pay structure insofar</p> <p>21 as compensation from the sale of Full Circle Benefits set</p> <p>22 up?</p> <p>23 A I can't remember exactly. I could get</p> <p>24 those exact documents for you. Lilly Maize would have</p>	<p>137</p> <p>1 been 120 something when you started?</p> <p>2 A Yeah. Right. I mean, it was, it was</p> <p>3 within, I mean, within that same month that I started</p> <p>4 that they, that they had, that they had done that.</p> <p>5 Q Why'd they decide to raise that?</p> <p>6 A I don't know. I think that's what</p> <p>7 several of the places were charging at the time. I mean,</p> <p>8 I didn't have much to do with really setting up the, you</p> <p>9 know, the price and the structure of it.</p> <p>10 Q The structure now, as I understand it, is</p> <p>11 that obviously \$8.49 goes to the state for sales tax.</p> <p>12 \$101.50 goes to Spectrum.</p> <p>13 A Uh-huh.</p> <p>14 Q Out of the initial \$149.99. The</p> <p>15 remainder is divided between Gene Neal, who gets \$5.00?</p> <p>16 A Right. I get 25 and the service gets 10.</p> <p>17 Q That's where I was going. Okay. Then</p> <p>18 out of the \$101.50 that goes to Spectrum, Spectrum only</p> <p>19 keeps 44.</p> <p>20 A I get 10 and Wally gets -- I'm not sure</p> <p>21 what the figure is he gets. But I know he gets --</p> <p>22 Q \$47.50?</p> <p>23 A \$47.50 sounds right.</p> <p>24 Q And then a sum, 20 or 40, whatever, a sum</p>

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<p>138</p> <p>1 goes to the service department?</p> <p>2 A Yeah.</p> <p>3 Q Okay. Is that similar to the allocations</p> <p>4 when you guys went there?</p> <p>5 A Yeah. I think it's been the same</p> <p>6 allocation pretty much the, you know, very similar the</p> <p>7 whole time.</p> <p>8 Q Okay. So the 44, the \$44.00 that</p> <p>9 ultimately Spectrum keeps, it would be your belief that</p> <p>10 that sum is exactly the same, \$44.00, that they were</p> <p>11 keeping out of each deal back in '96?</p> <p>12 A Something. I mean, I can't tell you</p> <p>13 exactly, you know, exactly what it was, but I would, you</p> <p>14 know, very close. It might have been a dollar or two</p> <p>15 difference, but it would've been very close.</p> <p>16 Q And I think you said Lilly Charles would</p> <p>17 have all these documents?</p> <p>18 A She could tell you exactly. Yes, she's,</p> <p>19 she's the -- she's good.</p> <p>20 Q Okay.</p> <p>21 A She'll give you all the specifics.</p> <p>22 Q Okay.</p> <p>23 A Anything you'd need.</p> <p>24 Q She's the business manager?</p>	<p>140</p> <p>1 Q Is there any reason why out of the</p> <p>2 \$149.99 Spectrum, \$8.49 goes to state. Spectrum gets 44,</p> <p>3 and then you guys just divvy up what's left?</p> <p>4 A No, sir. I don't understand what your</p> <p>5 question -- why, you know.</p> <p>6 Q Well, it would seem to me to be a lot</p> <p>7 simpler than having an extra step to the process that</p> <p>8 Spectrum's going to kick money back to you after they get</p> <p>9 their \$101.50, when in fact all they're really charging</p> <p>10 for the product and service that they provide is \$44.00.</p> <p>11 MR. BROWN: Let me object to the</p> <p>12 use of the term kick-back.</p> <p>13 MR. BANDS: Return.</p> <p>14 MR. BROWN: I think that has --</p> <p>15 BY MR. BANDS:</p> <p>16 Q I'll adopt the change.</p> <p>17 A The only thing I know is it's the way,</p> <p>18 the way it was done. I mean, I know the previous owner</p> <p>19 that, you know, talking to Mr. Honeycutt, that he told me</p> <p>20 that, you know, that he always gave that check to his</p> <p>21 wife. I don't know if it was a good thing for, you know,</p> <p>22 the check to be coming home for him to have the wife or</p> <p>23 why it was done that way.</p> <p>24 I mean, that would be a question that</p>
<p>139</p> <p>1 A Uh-huh. She's the office manager,</p> <p>2 business manager.</p> <p>3 Q All right. Well, I realize you guys are</p> <p>4 an S Corporation and profits, losses pass through, et</p> <p>5 cetera, et cetera, et cetera.</p> <p>6 Is there any reason why you get part of</p> <p>7 your money directly out of the \$149.99 and then you get</p> <p>8 an additional sum sent back to you from Spectrum?</p> <p>9 A Yeah. When I was just sales manager, I</p> <p>10 was receiving, I wanted -- I can't remember why, but I</p> <p>11 wanted part of it up front. I wanted a part of it,</p> <p>12 someway or another. I can't remember if I got \$10.00</p> <p>13 from Spectrum and 10 at the store.</p> <p>14 And then, but I never changed the part</p> <p>15 that I got from Spectrum. I think when I was sales -- I</p> <p>16 don't know why that it was that way. I can't really</p> <p>17 remember.</p> <p>18 But I think we set it up to where I got</p> <p>19 10, it was like cash in the hand. And then, you know, 10</p> <p>20 I got from, from Spectrum. And we just never changed</p> <p>21 that.</p> <p>22 Q Ultimately the charge that Spectrum</p> <p>23 imposes on you guys out of each deal is 44 bucks; right?</p> <p>24 A As far as I know, yes.</p>	<p>141</p> <p>1 would have to be asked of, you know, whoever set it up.</p> <p>2 I didn't set it up to have it, you know, to have it come</p> <p>3 that way. That was just the way it was set up with</p> <p>4 Spectrum.</p> <p>5 Q Okay. On the coupon program, when does</p> <p>6 the effective date of the coupon limit the use of the</p> <p>7 coupon? I mean, what, what's the policy on the mileage</p> <p>8 intervals that are printed on the coupons?</p> <p>9 A You know, the mileage intervals are, you</p> <p>10 know, are printed. It's, I think, it's from zero to</p> <p>11 99,000 or 100,000 miles. But we tell people, you know,</p> <p>12 we don't worry about what the mileage says. That we'll,</p> <p>13 you know, we'll honor it. If you've got the coupons,</p> <p>14 we'll honor them.</p> <p>15 Because, you know, they're not tailor</p> <p>16 made for used cars to start. If a used car has got 20 or</p> <p>17 30,000 miles on it, it doesn't start from there.</p> <p>18 So we just tell them, you know, as long</p> <p>19 as you've got, you know, you've got the coupon, we'll,</p> <p>20 you know, we'll honor it. We're not going to worry about</p> <p>21 what the mileage says on it.</p> <p>22 Q Okay.</p> <p>23 A You know, we'll give you full, you know,</p> <p>24 full benefit or full use of the, you know, the coupons in</p>

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<p style="text-align: right;">142</p> <p>1 the book.</p> <p>2 Q Okay. So the, the mileage at the time of</p> <p>3 purchase actually is treated as zero for coupon purposes?</p> <p>4 A Right.</p> <p>5 Q Regardless of --</p> <p>6 A The coupons books are printed up --</p> <p>7 Q -- the actual mileage?</p> <p>8 A -- the same way every time. They're not</p> <p>9 tailor made with the mileage on them.</p> <p>10 Q Okay. What if I have a coupon book and</p> <p>11 I'm still within a certain mileage interval that would be</p> <p>12 applicable to that coupon and I'm on coupon 5, and I want</p> <p>13 to skip ahead to coupons that may be more lucrative or</p> <p>14 give me a better deal on whatever I need done, but</p> <p>15 they're way outside my present mileage interval. Will</p> <p>16 you honor that coupon?</p> <p>17 A Now, we're getting into, I mean, what</p> <p>18 ifs. I mean, I don't know exactly how to answer your</p> <p>19 question. You'd have to have the coupon and I'd have to</p> <p>20 see an exact situation to give you, you know, an answer.</p> <p>21 I'd have to know what coupon is it that</p> <p>22 you're wanting to use versus this one. But if the oil</p> <p>23 change coupons are all the same and the same discount, it</p> <p>24 doesn't matter to me if you use the third one or the</p>	<p style="text-align: right;">144</p> <p>1 A I'd have to look at it and see.</p> <p>2 Q Okay.</p> <p>3 A I mean, there's very --</p> <p>4 MR. BANDS: I don't know. Do we</p> <p>5 have a copy of the coupon book? That's just marketing</p> <p>6 materials.</p> <p>7 MR. YIANNE: Here's a copy.</p> <p>8 MR. BANDS: They did copy the</p> <p>9 coupon book. What time is it?</p> <p>10 MR. BROWN: It's almost 5:30.</p> <p>11 MR. BANDS: Well, 5:30 was when we</p> <p>12 were going to decide whether we were going to go longer</p> <p>13 or not. I don't care.</p> <p>14 MR. PICCIRILLO: If you can finish, I</p> <p>15 don't care.</p> <p>16 MR. BANDS: I mean, I'm at a</p> <p>17 stopping point, and we can go probably all night with</p> <p>18 this stuff if, I mean, it's --</p> <p>19 MR. BROWN: Well, if you're at a</p> <p>20 stopping point, we've obviously got to come back, anyway.</p> <p>21 We're not going to get done.</p> <p>22 MR. BAND: I mean, yeah. We</p> <p>23 weren't going to --</p> <p>24 MR. BROWN: Okay.</p>
<p style="text-align: right;">143</p> <p>1 fifth one or the sixth one or, you know, but if, you</p> <p>2 know, but if you -- it depends on the whole situation.</p> <p>3 I mean, chances are, you know, we're</p> <p>4 going to do whatever, you know, but I don't want to just</p> <p>5 give you an answer not knowing. You know, that's a wide</p> <p>6 open question. You're not giving me enough specifics to</p> <p>7 say a yes to.</p> <p>8 Q So, well, I guess what you're telling me,</p> <p>9 though, that there may be circumstances where the mileage</p> <p>10 intervals and the amounts of the coupons will make a</p> <p>11 difference insofar as whether you honor them?</p> <p>12 A No. I'm not really telling you. I mean,</p> <p>13 I'd have to know more specifics to -- I mean, I don't</p> <p>14 really understand exactly what your question. I'm going</p> <p>15 to do what's going to benefit you, the customer, the</p> <p>16 most.</p> <p>17 Q Okay. Those coupons aren't good during</p> <p>18 specials, though, right?</p> <p>19 A There are some specials which we discount</p> <p>20 it down below. You can either use the coupon or the</p> <p>21 special, whichever is, you know, whichever is best.</p> <p>22 Q It doesn't say that on the coupon,</p> <p>23 though, does it? The coupon says that it's not good</p> <p>24 during any specials.</p>	<p style="text-align: right;">145</p> <p>1 MR. BANDS: I mean, it's not --</p> <p>2 I'm not done. I'm not close to being done.</p> <p>3 MR. BROWN: Okay.</p> <p>4 MR. BANDS: So, I mean, I just</p> <p>5 remember you saying 5:30 that you all --</p> <p>6 MR. BROWN: That's fine.</p> <p>7 MR. BANDS: Is that okay?</p> <p>8 MR. BROWN: We can stop now. I</p> <p>9 don't have any problem with that.</p> <p>10 MR. BANDS: I mean, I just --</p> <p>11 because we started late and it's going to take me longer</p> <p>12 than I thought.</p> <p>13 MR. BROWN: Okay.</p> <p>14 THE WITNESS: Whatever you all want</p> <p>15 to do is fine with me.</p> <p>16 MR. BROWN: Why don't we just</p> <p>17 continue the deposition?</p> <p>18 MR. BANDS: That's fine. Like we</p> <p>19 did with Wally.</p> <p>20 MR. BROWN: Yeah.</p> <p>21 MR. BANDS: Why don't we have Kim</p> <p>22 just give you a buzz tomorrow about some dates? I know,</p> <p>23 I know you can't do it tomorrow. You've already told me</p> <p>24 that.</p>

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Mary J. Gagnon, CCR



1 and is attached hereto.)  
2 (WHEREUPON, the video deposition  
3 was adjourned at 5:28 p.m.)

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**SIGNATURE PAGE**

I have read the foregoing transcript which contains a correct record of answers made by me to the questions therein recorded, or as amended in the attached list of corrections.

\_\_\_\_\_

Date \_\_\_\_\_ Name \_\_\_\_\_

STATE OF \_\_\_\_\_ ,  
COUNTY OF \_\_\_\_\_ , to wit:  
Sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003.  
My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

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ERRATA SHEET

The following changes and/or corrections are suggested for the deposition of DONNA MARIE GORDON taken on May , 2003.

Page No.	Line No.	Correction	Reason
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REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, Mary J. Gagnon, Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing deposition of GEORGE R. NISBET, JR. was duly taken by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof; the said witness having been duly sworn by me to testify the whole truth and nothing but the truth concerning the matter in controversy.

I do certify that the said deposition was correctly taken by me by means of the Stenomask; that the same was transcribed by me, and that the said transcript is a true record of the testimony given by said witness.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a

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relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

Given under my hand this 23rd day of May, 2003.

*Mary J. Gagnon*  
Mary J. Gagnon, CCR  
Notary Public  
My commission expires December 7, 2010.  
  
NOTARY PUBLIC  
STATE OF WEST VIRGINIA  
MARY J. GAGNON  
13 Cottonwood Dr.  
Elkview, WV 25074  
My Commission Expires Dec. 7, 2010

Garrett Reporting Service

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